

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

John Doe

vs

The Pennsylvania State
University, et al.

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4:17-CV-01315

BEFORE HONORABLE MATTHEW W. BRANN
PLACE: Williamsport, Pennsylvania
PROCEEDINGS: Preliminary Injunction-Volume I
DATE: Thursday, August 10, 2017

APPEARANCES:

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APPEARANCES: (Continued)

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1 (3:40 p.m., convene.)

2 THE COURT: We're back on the record now. It's now
3 3:40 p.m. And I am told by my staff that, Counsel, you have
4 not been able to effect a resolution of this matter.

5 Mr. Bernstein, is that fair to stay?

6 MR. BERNSTEIN: That is fair to stay, unfortunately,
7 Your Honor.

8 THE COURT: Mr. Keller, do you agree?

9 MR. KELLER: I do agree, Your Honor.

10 THE COURT: In light of the lateness of the hour and
11 the fact that the better part of the last six hours have been
12 spent trying to negotiate this matter, we need to have a
13 somewhat truncated hearing today. This is not going to go on
14 all night. I indicated, I think through my clerk, that you
15 each have about an hour, and I'll be a little flexible about
16 that but not too much flexibility at this point.

17 I think you've got to figure out what the highlights
18 are of what the case is for the plaintiff and the highlights of
19 the case are for the Defendant Penn State and be prepared to
20 proceed accordingly.

21 With that said, I'm aware of what the case is about.
22 Of course, I have read all of your papers. I thank you for the
23 same. If you would like to make, however, a brief opening
24 statement for each side, maybe you've got a five minute opening
25 statement to kind of orient the Court, I'm prepared to hear you

1 out on that, or we can move directly into your respective cases
2 in chief.

3 MR. BERNSTEIN: Your Honor, I will be briefer than
4 five minutes.

5 THE COURT: Go right ahead, Mr. Bernstein.

6 MR. BERNSTEIN: Your Honor, as you have just
7 indicated, you have read the papers. We actually had a
8 telephone conference a week or so ago where you asked very
9 pointed questions with regards to the matter. So I really
10 appreciate that Your Honor is fully apprised of the situation
11 and the issues in question.

12 Just briefly. We're here before you seeking a
13 temporary restraining order/preliminary injunction with regards
14 to my client. If I just may, Your Honor, Your Honor has
15 previously granted the plaintiff's motion for him to proceed
16 under pseudonym John Doe. So with the Court's permission, I am
17 going to proceed that way.

18 THE COURT: That's fine. As I expected. In fact, my
19 courtroom deputy just asked me that question.

20 MR. BERNSTEIN: And Your Honor, if I may, and I
21 probably should have done it before, it's not really an opening
22 statement. But there is a witness that I'm going to be calling
23 that is not a party, a Mr. Perry. I would ask that he leave
24 the courtroom during the testimony.

25 THE COURT: All right. Mr. Perry. The plaintiff's

1 counsel has asked for a sequestration of this particular
2 witness Mr. Keller, do you have any objection to that?

3 MR. KELLER: I don't have any objection to that, Your
4 Honor.

5 THE COURT: All right. Perhaps the courtroom -- the
6 court security officer could escort this gentleman back to one
7 of the conference rooms or the main conference room where we'll
8 have you wait, sir, until you are called to testify. Anyone
9 else that needs to be sequestered?

10 Mr. Keller, is there anyone else that needs to be
11 sequestered from the defense perspective?

12 MR. KELLER: I don't think, unless Mr. Doe's father is
13 going to be called as a witness, no.

14 MR. BERNSTEIN: Not my intention.

15 MR. KELLER: I don't know, Your Honor, if there is
16 media in the courtroom. Given the sensitivity, I wanted to ask
17 the question.

18 THE COURT: There is media present. There is a very
19 distinguished reporter for The Harrisburg Patriot and who
20 operates through PennLive. And he is a Northwestern graduate.
21 He understands all of the various protocols and the
22 sensitivities of proceeding with a pseudonym, I'm sure, in this
23 matter. Other than that, I don't think there are other members
24 of the media present.

25 MR. KELLER: Thank you.

1 THE COURT: Just Mr. Beauge, we will call him, of the
2 Patriot.

3 MR. KELLER: Thank you, Your Honor.

4 THE COURT: Mr. Bernstein.

5 MR. BERNSTEIN: So Your Honor, just briefly. We are
6 here seeking a temporary restraining order to allow our client,
7 John Doe, to continue with his second year at the prestigious
8 Penn State Jefferson medical program, the PMM it's also known
9 as, which is commencing on August 21st, 2017, the fall
10 semester.

11 Currently, John Doe has been suspended for this fall
12 semester as a result of an alleged non-consensual sexual
13 incident which the plaintiff vehemently denies. He proceeded
14 through hearings in various stages at Penn State and as we will
15 establish through the witnesses and in our papers, were
16 drastically floored for numerous reasons, including due process
17 violations of Title IX, contract violations, and then clearly,
18 he is entitled to the relief sought.

19 And just briefly, as Your Honor had indicated and had
20 referenced recently, the Third Circuit in its Reilly decision
21 versus the City of Harrisburg, has, I believe, defined and/or
22 cleaned up what the standard is with regards to the threshold
23 that the movant has and that -- have to prove the two most
24 critical prongs which includes likelihood of success on the
25 merits and irreparable harm. And once the movant has met that

1 burden, the only two factors regards to the harm of the other
2 party and the public interest, the Court then can consider
3 those factors.

4 Also, in that decision there's, I believe, strong
5 dicta to indicate that there is a sliding scale in terms of how
6 much likelihood of success on the merits the movant has to
7 establish when the harm that they potentially face is greater;
8 the greater the harm, the less likely on the merits, almost
9 like a sliding scale as enounced in Reilly.

10 So Your Honor, I would respectfully submit that at the
11 end -- I guess I'll have an opportunity to speak again, and I
12 believe my assistant here, Attorney Phil Byler, will be
13 addressing the due process issues and the legal issues more
14 specifically in closing.

15 But at that time, Your Honor, it is our position that
16 the plaintiff has certainly met their burden, that the
17 likelihood of success on the merits is high and that the
18 irreparable harm that will come to this individual, should a
19 temporary restraining order not be issued and to allow him to
20 continue that program, is severe, clearly outweighs any
21 potential harm on behalf of the Defendant Penn State, as the
22 evidence will establish that the plaintiff continued throughout
23 the whole year, from September of '16 through May of '17 at the
24 school. And there were no issues. So we are simply asking to
25 restore the status quo.

1 And it's in the public interest to make sure that
2 individuals receive due process, whether it's a school, or
3 wherever it is that due process doesn't -- is not eradicated
4 simply for the fact of it being eradicated, which is what the
5 defendant did in this matter.

6 Thank you, Your Honor.

7 THE COURT: Thank you. Mr. Keller.

8 MR. KELLER: Thank you, Your Honor. Your Honor, if I
9 may ask one procedural question before I begin. In the
10 interest of expediting matters, if the Court would be
11 agreeable, if I could ask the witnesses while they are on the
12 stand whatever questions I would ask as part of my case in
13 chief, that may make it go a little more completely.

14 THE COURT: I kind of hoped we would proceed that way.
15 Mr. Bernstein, in light of our need of a kind of truncated
16 hearing today, do you have any objection to that?

17 MR. BERNSTEIN: Absolutely not, Your Honor.

18 THE COURT: We'll proceed accordingly then.

19 MR. KELLER: Thank you, Your Honor. I will be
20 extremely brief. Your Honor, as we have discussed and is in
21 our briefing, the two -- and as counsel just related, the two
22 threshold issues to be decided for preliminary injunctive
23 relief are is there a likelihood of success on the merits. In
24 this case the two claims which plaintiff argues would support
25 success on the merits are the due process claim, the Title IX

1 claim, I would submit there is not in the briefing and there
2 will not be today any evidence that any decisions made by the
3 University or any of the other defendants were based on
4 Mr. Doe's gender. So the Title IX claim, he has a very low
5 likelihood of success on the merits. We would say no
6 likelihood of success on the merits.

7 On the due process claims the pertinent cases in this
8 context say that a student has a right to notice of the
9 allegations against him, not the precise student conduct charge
10 at the beginning but the allegations against him and an
11 opportunity to be heard. I think, as is described in our
12 papers, and we'll be able to establish today, Mr. Doe had over
13 a dozen opportunities to be heard in this case.

14 So on the merits, Your Honor, we believe that the
15 plaintiff has not met the standard for an injunction. And in
16 terms of irreparable harm, the actual sanction is suspension
17 for a semester, he has to take some educational classes. He is
18 suspended from student housing. And then there's a
19 recommendation -- a recommendation that he not be in the
20 program while the complainant is in the program. But he will
21 be back at the University. His -- whatever due process or
22 property interest he has in coming back to the University, he
23 will be back at the University in the spring of 2018.

24 And our position, as laid out in our briefing, is that
25 whatever harm that gap may cause can be compensated by money

1 damages, which the plaintiff's actually say on page seven of
2 their brief, and therefore, he can not show irreparable harm.

3 Beyond that, Your Honor I'll just rest on our papers
4 so that we can get started.

5 THE COURT: Thank you, Mr. Keller.

6 With that said, Mr. Bernstein, call your first
7 witness.

8 MR. BERNSTEIN: Your Honor, at this time the People
9 call Karen Feldbaum.

10 THE COURT: Ms. Feldbaum, if would you come forward
11 please to be sworn.

12 KAREN FELDBAUM,
13 called as a witness on behalf of the Plaintiff, having been
14 duly sworn or affirmed according to law, testified as follows:

15 THE COURTROOM DEPUTY: Please state your name and
16 spell your last name for the record

17 THE WITNESS: Karen Feldbaum. F, as in Frank, E-L-D,
18 as in David, B, as in boy, A-U-M, as in Mary.

19 THE COURTROOM DEPUTY: Thank you. You may be seated.

20 THE COURT: Mr. Bernstein, you may proceed.

21 MR. BERNSTEIN: May I use the lecturn?

22 THE COURT: You may. I would prefer that actually.

23 MR. BERNSTEIN: Your Honor, with the Court's
24 permission, may I treat Ms. Feldbaum as a hostile witness in
25 terms of examination?

FELDBAUM - DIRECT (as-on-cross)

1 THE COURT: You may.

2 MR. BERNSTEIN: Thank you, Your Honor.

3 DIRECT EXAMINATION (as-on-cross)

4 BY MR. BERNSTEIN

5 Q. Ms. Feldbaum, is it Dr. Feldbaum?

6 A. It is not.

7 Q. Okay. Ms. Feldbaum, if you can't hear me, just let me
8 know. By who are you employed?

9 A. Penn State University.

10 Q. How long have you been employed?

11 A. Thirty-two years.

12 Q. And what is your current title?

13 A. Interim senior director of student conduct.

14 Q. And did that title change in the last week?

15 A. In the last two weeks, three weeks.

16 Q. And what is your responsibility currently?

17 A. I act in the role of interim senior director of the student
18 conduct.

19 Q. Let me ask you this. Back in September of 2016 through
20 June of 2017, what was your title?

21 A. Interim senior associate director of student conduct.

22 Q. And briefly, could you tell the Court what were your
23 responsibilities in that position?

24 A. I supervised staff. I managed conduct cases. I'm a
25 liaison with World Campus. I was the point person in our

FELDBAUM - DIRECT (as-on-cross)

1 office for the management of sexual misconduct cases and a few
2 other duties as assigned.

3 Q. Okay. Are you familiar with Penn State's Code of Conduct
4 and Student Conduct Procedures?

5 A. I am.

6 Q. Is that something that you deal with on a daily basis in
7 your position?

8 A. Probably not daily but regularly.

9 Q. Okay. Are you familiar with the term case manager as it is
10 used in the Code of Conduct and Student Conduct Procedures?

11 A. I am.

12 Q. And in fact, you are a case manager, are you not?

13 A. Correct.

14 Q. Now, back in -- in April of 2016 in this -- before this
15 very judge, Penn State was before this Court on another student
16 disciplinary action, to your knowledge. Is that correct?

17 A. I don't recall the date.

18 Q. Okay. If I told you that it was resolved by a decision of
19 His Honor in April of 2016, would that -- would you agree with
20 that?

21 A. I don't recall the date.

22 Q. Okay. Well, were you at all involved in that litigation?

23 A. Involved? I'm not sure --

24 Q. Okay.

25 A. -- if I understand the question.

FELDBAUM - DIRECT (as-on-cross)

1 Q. Well, did you have to appear in court like you are doing
2 today?

3 A. I did appear in court.

4 Q. Okay. And were you involved with any resolution in terms
5 of the Code of Conduct based upon that decision?

6 A. No.

7 Q. Okay. Now, were you a case manager in that case?

8 A. Yes.

9 Q. In your responsibilities at Penn State, are you familiar
10 with a 2011 document called the "Dear Colleague Letter"?

11 A. I am.

12 Q. And in fact, would you agree with me that Penn State
13 strived to comply with the provisions of the "Dear Colleague
14 Letter"? Isn't that correct?

15 A. Yes.

16 Q. In fact, the "Dear Colleague Letter" threatened the loss of
17 extraordinary amounts of funding from the federal government if
18 institutions did not comply. Isn't that correct?

19 MR. KELLER: Your Honor, I'm going to --

20 THE COURT: Just a moment, Ms. Feldbaum.

21 MR. KELLER: Objection. That mischaracterizes the
22 document, and the witness doesn't have it in front of her.

23 THE COURT: Does the witness need to have the document
24 in front of her, Mr. Bernstein, for her to respond?

25 MR. BERNSTEIN: Your Honor, again, I apologize. Do

FELDBAUM - DIRECT (as-on-cross)

1 you have the binder of exhibits, Your Honor?

2 THE COURT: I do. I have a binder of the exhibits.

3 MR. BERNSTEIN: I'm sorry. I thought there would be
4 one on the witness table. Is there not?

5 THE COURT: I can't speak to that. But there is one
6 before me.

7 THE COURTROOM DEPUTY: There is not one up there.

8 MR. BERNSTEIN: Your Honor, if I can.

9 THE COURT: You may approach the witnesses.

10 MR. BERNSTEIN: And leave this for the witnesses.

11 THE COURT: I have no objection, unless you do, Mr.
12 Keller.

13 MR. KELLER: No. That would expedite things.

14 MR. BERNSTEIN: Okay. Thank you. If I may, Your
15 Honor, that's just simply documents that both sides put
16 together. Your Honor, if I may, both sides have agreed to
17 stipulate to the admission as to all of the exhibits with the
18 exception of one. I believe it's Plaintiff's 15. That's the
19 only exhibit that both sides have not agreed to being admitted.

20 THE COURT: Does that sound right, Mr. Keller?

21 MR. KELLER: That is correct, Your Honor.

22 THE COURT: That's fine. We'll admit those exhibits
23 then with the exception of P-15. Do you want to orient
24 Ms. Feldbaum as to the particular exhibit that she should be
25 aware of?

FELDBAUM - DIRECT (as-on-cross)

1 MR. BERNSTEIN: Absolutely, Your Honor.

2 BY MR. BERNSTEIN

3 Q. P-12, Ms. Feldbaum.

4 THE COURT: Are you going to display any of these
5 exhibits, Mr. Bernstein, electronically?

6 MR. BERNSTEIN: It was not my intention, Your Honor,
7 since there is no jury.

8 BY MR. BERNSTEIN

9 Q. Let me backtrack. So you are familiar with that letter.
10 Is that correct?

11 A. I have seen this letter before, yes.

12 Q. I believe you have indicated that Penn State strived to
13 comply with this letter. Correct?

14 A. Correct. Yes. Yes.

15 Q. And let me ask you this question. In your capacity at Penn
16 State, what, if any, understanding did you have, okay, I just
17 want to know what you had, with regards to any ramifications or
18 sanctions should Penn State not comply with the "Dear Colleague
19 Letter"?

20 A. I was really not made aware of specific --

21 Q. But you were made --

22 A. -- fees or costs. I'm not --

23 Q. I'm sorry. But you were made aware -- you were made aware
24 that Penn State was to comply with it. Correct? You were told
25 that?

FELDBAUM - DIRECT (as-on-cross)

1 A. That was my understanding.

2 Q. Was that a meeting that you had at the school?

3 A. Probably more of a conversation.

4 Q. And who did you have the conversation with?

5 A. Probably with my colleagues in my office.

6 Q. And who is your -- in April of 2011, who was your boss?

7 A. Danny Shaha.

8 Q. Did you have that conversation with Danny Shaha, to your
9 knowledge?

10 A. I don't recall who sat around the table, but I would assume
11 that he would have.

12 Q. So it was a round-table discussion. Is that fair to say?

13 A. There were many conversations about this document.

14 Q. So many conversations. So tell us what was discussed in
15 terms of what Penn State was going to do to comply with the
16 "Dear Colleague Letter"?

17 A. The focus of the things that I recall, many of the things
18 in the "Dear Colleague Letter" we were already doing. So it
19 wasn't as difficult to comply specifically for the role of the
20 Office of Student Conduct. A significant change that was made
21 was our burden of proof.

22 Q. In fact, you lowered your burden of proof in response to
23 the "Dear Colleague Letter". Correct?

24 A. We did change our burden of proof, correct.

25 Q. Did you lower it? Correct? Withdrawn.

FELDBAUM - DIRECT (as-on-cross)

1 A. It was different.

2 Q. What was -- what was your burden of proof before the "Dear
3 Colleague Letter"?

4 A. Clear and convincing.

5 Q. So as a result of the "Dear Colleague Letter" of April of
6 2011 -- '10 -- '11, you changed your -- Penn State, not you. I
7 apologize. Penn State changed their burden of proof in student
8 disciplinary hearings from clear and convincing to what?

9 A. A preponderance of the evidence.

10 Q. And would you agree, based on your knowledge, that would be
11 lowering the standard?

12 A. I think that would be one interpretation, yes.

13 Q. Well, I'm asking your interpretation, ma'am. Is that your
14 understanding?

15 A. Well, I -- I think for people who are victims in those
16 allegations, I think there was a feeling that clear and
17 convincing was too high for a victim.

18 MR. BERNSTEIN: Your Honor, I would move to strike as
19 nonresponsive.

20 THE COURT: Stricken. Would you respond to the
21 question? Why don't you ask it again, Mr. Bernstein?

22 MR. BERNSTEIN: Yes, Your Honor.

23 BY MR. BERNSTEIN

24 Q. To your knowledge, I'm only asking about you --

25 A. Right.

FELDBAUM - DIRECT (as-on-cross)

1 Q. -- was it your understanding that a preponderance of the
2 evidence was lower than clear and convincing?

3 A. Yes. That could be an interpretation.

4 Q. And during these round-table discussions, was anything
5 discussed about what would happen if Penn State did not follow
6 through on these -- on the "Dear Colleague Letter"?

7 A. I don't believe that was the focus of the conversation,
8 what would happen if we didn't.

9 Q. Thank you. But I'm not asking what the focus of the
10 conversation was. I'm asking if there were any conversations,
11 whether it was in passing, whether it was at one meeting,
12 whether it was at seven meetings; if there were any
13 conversations as to what were the consequences if Penn State
14 did not follow the guidelines as set forth in the "Dear
15 Colleague Letter"?

16 A. I don't believe so.

17 Q. Are you familiar with The Cleary Act?

18 A. I am.

19 Q. And The Cleary Act requires schools to report certain
20 findings during different intervals. Is that correct?

21 A. Correct.

22 Q. Isn't it a fact, ma'am, that in 2016 Penn State was fined
23 \$4.2 million for a violation of The Cleary Act?

24 MR. KELLER: Your Honor.

25 THE COURT: Mr. Keller.

FELDBAUM - DIRECT (as-on-cross)

1 MR. KELLER: Yes. I'm objecting. Rule 403,
2 prejudice, confusing, waste of time. We have an hour. We're
3 not even talking about this case yet, Your Honor. That's my
4 objection.

5 THE COURT: Mr. Bernstein.

6 MR. BERNSTEIN: Your Honor, we are very much talking
7 about this case. This case is a violation of due process and
8 Title IX discrimination. And these go to the exact facts that
9 they have changed their rules and procedures in response to the
10 "Dear Colleague Letter", which clearly indicates a bias against
11 males and in favor of females in these type of situations. And
12 the fact that the school was fined \$2.4 million at around the
13 time at my client's, quote, unquote, due process hearing is
14 clearly relevant, Your Honor.

15 THE COURT: All right. I would agree, Mr. Keller,
16 there is a need to expedite the hearing, but I think this is
17 relevant testimony. I will allow it. Perhaps you could repeat
18 the question.

19 MR. BERNSTEIN: Your Honor, I'll make it even better.
20 This is my only question on this and then I'm going to move on.

21 THE COURT: Thank you.

22 BY MR. BERNSTEIN

23 Q. Isn't it a fact, Ms. Feldbaum, that in 2016 Penn State was
24 fined a record \$2.4 million for violation of The Cleary Act?
25 Yes, or no, ma'am?

FELDBAUM - DIRECT (as-on-cross)

1 A. I don't recall the amount.

2 Q. Okay. Fair enough. I'm sorry, Your Honor. Is it fair to
3 say that in 2016 Penn State was assessed a hefty fine in
4 violation of The Cleary Act?

5 A. Yes.

6 Q. In fact, as a result of that fine, Penn State did
7 everything they can to do a complete 180 with regards to sexual
8 discrimination cases?

9 A. I would not agree with that.

10 Q. Now, I asked you previously if you were familiar with the
11 term case manager. Are you familiar -- and you indicated that
12 you were. In fact, you are one. Correct?

13 A. Yes.

14 Q. Are you familiar with the term investigative model as it
15 applies in Penn State's Code of Conduct and Student Conduct
16 Procedure?

17 A. Right now, yes.

18 Q. Okay. You're familiar with the title?

19 A. Sure.

20 Q. Isn't it a fact that the case in front of His Honor back in
21 April of 2016 dealt with the investigative model?

22 A. I believe so, yes.

23 Q. And isn't it fact that His Honor ordered Penn State to
24 change the way they did policies under the investigative model?

25 A. I don't know what the judge directed.

FELDBAUM - DIRECT (as-on-cross)

1 Q. Now, are you familiar with, in regards to Penn State's Code
2 of Conduct, something titled AD-85?

3 A. It's a University policy.

4 Q. Okay. What is it?

5 A. It is a policy that addresses University guidelines for
6 cases of sexual misconduct and discrimination. I think gender
7 equity. I actually could not tell you what the actual title
8 is.

9 Q. Is it fair to say those are the procedures in which
10 allegations of sexual misconduct under Title IX are adjudicated
11 or followed?

12 A. It's a policy statement more so than a procedural
13 statement.

14 Q. Okay. Now, let me ask you this, Ms. Feldbaum. As you sit
15 here right now today, is it your understanding that John Doe is
16 a registered student for the Fall semester of 2017 at Penn
17 State?

18 A. No.

19 Q. So it's your understanding that he's not?

20 A. Correct.

21 Q. Would it surprise you that, in fact, he is registered?

22 A. It would.

23 Q. Okay. I want to ask you to turn to Plaintiff's 14 in the
24 exhibit binder. That's an invoice from Penn State, is it not?

25 A. It is.

FELDBAUM - DIRECT (as-on-cross)

1 Q. And due to the nature of this, I'm making a representation
2 to the Court that on the top left there's a redaction. But I
3 want you to assume for this question and as an officer of the
4 court that this invoice was addressed to my client.

5 MR. BERNSTEIN: And I have the unredacted one, if Your
6 Honor wants to see it.

7 BY MR. BERNSTEIN

8 Q. I want you to assume for this question that this invoice
9 was sent to my client. Okay?

10 A. Correct.

11 Q. Can you tell us on the top right hand what the date of this
12 invoice is?

13 A. August 1st, 2017.

14 Q. So you agree with me that's nine days ago. Correct?

15 A. Correct.

16 Q. And you agree with me that Penn State sent this invoice,
17 and under current activity it says July 25th, 2017 Fall of
18 2017, U-P student fee. Correct?

19 A. Correct.

20 Q. July 25th, 2017, Fall of 2017 U-P information technology
21 fee. Correct?

22 A. Correct.

23 Q. And then July 25th 2017, Fall of 2017 U-P non R-E-S, I'm
24 assuming resident?

25 A. Um. Okay. I'm not an expert on this form.

FELDBAUM - DIRECT (as-on-cross)

1 Q. R-E-S and then it uses U-G-R-D. Can we agree that's
2 non-resident undergrad differential tuition? That's what it
3 says. Right?

4 A. That's what it says, correct.

5 Q. Okay. Major PMM BS. Correct?

6 A. Correct.

7 Q. And then there's a bill for \$9,096.00. Correct?

8 A. Correct.

9 Q. Then at the end under enrollment information, it says
10 course, music seven, semester, Fall of 2017. Correct?

11 A. Correct.

12 Q. Then it says C-M-L-I-T 191, Fall of 2017. Correct?

13 A. Correct.

14 Q. So Ms. Feldbaum, let me ask you again. Based upon the
15 document that is in front of you, isn't it a fact that Penn
16 State considers John Doe to be a registered student beginning
17 the Fall semester of 2017?

18 MR. KELLER: Your Honor, I'm -- if I may. Objection.
19 Lack of personal knowledge. Rule 602. Ms. Feldbaum has
20 already said this isn't her document. She didn't issue it.
21 She is not aware.

22 THE COURT: I don't know that she has answered it that
23 way. The objection is noted, and it's overruled. Ms.
24 Feldbaum, you may answer the question. Do you recall the
25 question?

FELDBAUM - DIRECT (as-on-cross)

1 THE WITNESS: Tell --

2 THE COURT: Mr. Bernstein, repeat the question.

3 THE WITNESS: To the best of my knowledge, at this
4 moment, he is not enrolled in classes for the Fall.

5 BY MR. BERNSTEIN

6 Q. Okay. But now I want you to look at the document that's in
7 front of you.

8 A. Right.

9 Q. Does that document -- looking at it, does that change your
10 opinion as to whether or not he is a registered student?

11 A. No.

12 Q. Okay. Can you explain to me then why it says under
13 enrollment information, music seven, three credits, Fall of
14 2017? Can you explain that to me?

15 A. I have to give you my perspective.

16 Q. Do you want to do it?

17 A. We would have -- do you want me to talk --

18 THE COURT: Yes, give the answer, please.

19 THE WITNESS: We would have sent notification to the
20 registrar's office the early part of July and to request that
21 our notations be placed. That is what we can control. The
22 notations were placed and a hold was placed in the middle of
23 July. We do not control the next step of that process, which
24 is removing his courses. That would be done by the registrar's
25 office. I can't speak to why this indicates that it may not

FELDBAUM - DIRECT (as-on-cross)

1 have been done before August 1st.

2 BY MR. BERNSTEIN

3 Q. Do you have any documents with you to show that the hold
4 was put on him?

5 A. Um...

6 Q. Do you have documents with you that shows him in a hold?

7 A. I think that I probably have an e-mail.

8 Q. But none have been --

9 A. None.

10 Q. To your knowledge, none have been submitted to the Court.
11 Correct?

12 A. You would --

13 Q. I'm asking you to your knowledge.

14 A. No, I don't know.

15 Q. Okay. And in fact, he's enrolled in a music and a video
16 culture game. Correct?

17 A. Correct.

18 Q. But no other classes?

19 A. According to this, no.

20 Q. So wouldn't that indicate that he is registered for certain
21 classes, maybe not the science classes but he is registered for
22 gen ed classes commencing August 21st, 2017. Isn't that what
23 this document says, ma'am?

24 A. It is what the document says. You would have to speak with
25 the registrar's office because with our current Lion Path

FELDBAUM - DIRECT (as-on-cross)

1 system, I would not assume that this information is accurate.

2 MR. BERNSTEIN: Your Honor, I would move to strike the
3 part that is nonresponsive after the fact that that's what the
4 document says.

5 THE COURT: That is stricken from the record; the rest
6 of the answer taken.

7 BY MR. BERNSTEIN

8 Q. Now, Ms. Feldbaum, could we turn to Exhibit 9, Plaintiff's
9 9?

10 THE COURT: Nine, did you say?

11 MR. BERNSTEIN: Yes. I'm sorry, Your Honor.

12 BY MR. BERNSTEIN

13 Q. Are you there?

14 A. Um-hmm.

15 MR. BERNSTEIN: Your Honor, are you ready?

16 THE COURT: I am.

17 MR. BERNSTEIN: Thank you.

18 BY MR. BERNSTEIN

19 Q. Can you turn to page 13? I'm sorry. Before you turn to
20 page 13, can you just -- do you agree that Exhibit 9 is the
21 Code of Conduct and Student Conduct Procedures revised as of
22 April 25th, 2016? Right?

23 A. Yes.

24 Q. Can you turn now -- I'm sorry -- to page 13.

25 THE COURT: She has done so.

FELDBAUM - DIRECT (as-on-cross)

1 BY MR. BERNSTEIN

2 Q. Do you see under D, it says special protocols for Title IX
3 allegations?

4 A. I do.

5 Q. See also AD-85. So AD-85 is a separate document, ma'am, or
6 is this AD-85?

7 A. All of the Code of Conduct often makes references to
8 University-wide policy statements. So AD-85 is an
9 administrative policy statement of the University.

10 Q. And what we're looking at now, these are the procedures?

11 A. All of these are not outlined in AD-85.

12 Q. No, no, no. I understand that. We're off AD-85 now. What
13 we're looking at is procedures on how to go forward with these
14 types of hearing. Correct?

15 A. Correct. This is primarily the procedures.

16 Q. Now, do you agree with me that if reading number one, the
17 policy is typically to take place within 60 days of the receipt
18 of the complaint? Is that correct? That's what the University
19 policy was as of April 25th, 2016. Correct?

20 A. Correct.

21 Q. In fact, that coincides with the "Dear Colleague Letter".
22 Does it not?

23 A. It does.

24 Q. Now, if you could turn to Plaintiff's 1. Do you see that?

25 A. I do.

FELDBAUM - DIRECT (as-on-cross)

1 Q. Okay. And is this what is known as a non-contact letter?

2 A. Administrative directive.

3 Q. Is it also known as - have you heard the term no-contact
4 letter?

5 A. I've heard that before.

6 Q. Can we agree this document is what has been known as the
7 no-contact letter?

8 A. It -- I assume so, yes. It looks similar.

9 Q. Okay. Okay. And can you agree with me that it's dated
10 September 8th, 2016? Correct?

11 A. Yes.

12 Q. So September 8th, 2016, is it fair to say then in
13 accordance with page 13 of document 9, this matter, that
14 September 8th was the day that the complaint of misconduct was
15 known to Penn State?

16 A. It was known to the Office of Residence Life, not the
17 Office of Student Conduct.

18 Q. Are you saying that that -- well, who issues the no-contact
19 letter?

20 A. This is actually issued by a residence hall coordinator.

21 Q. Let me ask you to go back to Exhibit 1.

22 A. Okay, I'm there.

23 Q. On the top of the letterhead, doesn't it, in fact, say
24 Student Affairs?

25 A. It does.

FELDBAUM - DIRECT (as-on-cross)

1 Q. Office of Student Conduct?

2 A. It does.

3 Q. Isn't it a fact that as of September 8th, 2016 the Office
4 of Student Conduct was advised of this complaint?

5 A. No.

6 Q. No? So the letterhead doesn't mean anything?

7 A. I can explain.

8 Q. No. So the letter -- you're telling us this document, you
9 want us to disregard the letterhead. Correct?

10 MR. KELLER: Your Honor, objection. Argumentative.

11 THE COURT: I sustain the objection. You are allowed,
12 Ms. Feldbaum, to kind of explain. She has offered to provide
13 an explanation.

14 THE WITNESS: Thank you.

15 THE COURT: Ms. Feldbaum, why don't you go ahead and
16 tell the Court what the letter means, why it's written.

17 MR. BERNSTEIN: I'll withdraw the question, if that's
18 okay.

19 THE COURT: Fine.

20 BY MR. BERNSTEIN

21 Q. Ms. Feldbaum, you said that was from Student Affairs. When
22 was the Office of Student Conduct known about this case?

23 A. When did we become aware it was going to be our case? In,
24 I believe it was, January.

25 Q. Really? So...

FELDBAUM - DIRECT (as-on-cross)

1 Could you turn to document two, Plaintiff's 2. This
2 is an e-mail from Paul Apicella. Correct?

3 A. Yes.

4 Q. And who is that?

5 A. He is the Title IV coordinator, the director of the Office
6 of Sexual Misconduct Prevention and Response.

7 Q. That is different from the Office of Student Conduct?

8 A. It is.

9 Q. And the two of them don't talk to each other?

10 A. In general?

11 Q. Yeah. They don't know --

12 A. We communicate. They communicated with me in January when
13 they shared with me the case.

14 Q. Let me ask you this question. Under the investigative
15 model, if an investigator is assigned to a case, that's under
16 the Office the Student Conduct. Correct?

17 A. Right now?

18 Q. No. Back then.

19 A. At that time --

20 Q. In September of 2016 --

21 A. In --

22 Q. An investigator was part of the Office of Student Conduct.
23 Correct?

24 A. We had an investigator, but at that time the cases did not
25 begin in the Student Conduct Office.

FELDBAUM - DIRECT (as-on-cross)

1 Q. Is an investigator part of the Student Conduct Office?

2 A. They were at that time.

3 Q. Okay. So an investigator -- so it's a fact -- wasn't it,
4 in fact, an investigator --

5 A. I'm sorry. I need to correct that, if I may. Because in
6 the September -- and I couldn't tell you the date. I think it
7 was sometime in August that investigations started to be done
8 by the Office of Sexual Misconduct Prevention and Response. So
9 at that point in time, the investigation was not done by our
10 office.

11 Q. Well, okay.

12 A. Just to clarify.

13 Q. Now --

14 A. We do have an investigator, but he did not investigate
15 sexual misconduct cases at that time.

16 Q. Well, are you familiar with a person by the name of Kat
17 Matic?

18 A. I am.

19 Q. In September of 2016, what was her job?

20 A. I think she's the senior investigator of the Office of
21 Sexual Misconduct Prevention and Response.

22 Q. Was she part of the Student Conduct Office?

23 A. No, she is not.

24 Q. And when did Ms. Matic begin her employment with Penn
25 State?

FELDBAUM - DIRECT (as-on-cross)

1 A. I do not know.

2 Q. Well, do you have an idea?

3 A. I don't -- I don't recall her start date.

4 Q. If I told you it was September of 2016, would that surprise
5 you?

6 MR. KELLER: Your Honor, object to the form of the
7 question. There is no foundation for that question or that
8 statement.

9 THE COURT: Mr. Bernstein, do you want to lay a
10 foundation for that inquiry?

11 MR. KELLER: Ms. Matic can testify as to when she
12 started.

13 THE COURT: Sustained. You can lay a foundation, Mr.
14 Bernstein, if you care to do so.

15 MR. BERNSTEIN: I was going to use a document that
16 actually shows Ms. Matic's start date and see if that refreshes
17 her recollection.

18 THE COURT: You may do so.

19 MR. BERNSTEIN: Unless counsel wants to stipulate.

20 THE WITNESS: I don't think it would refresh my
21 recollection.

22 MR. KELLER: I don't believe that. But I also know
23 that Ms. Matic is going to testify so...

24 BY MR. BERNSTEIN

25 Q. As you sit here today -- again, can you -- without a

FELDBAUM - DIRECT (as-on-cross)

1 specific date, can you tell me approximately what year she
2 started?

3 A. It wouldn't have been before 2016 because --

4 Q. I'm sorry. Would or would not have been?

5 A. Would not have been because Paul Apicella -- I don't
6 recall. I think he began at the end of 2015 and he created
7 that office.

8 Q. So sometime in 2016?

9 A. I would assume, yes.

10 Q. Now, going back to Exhibit 1. Are you familiar with this
11 notice of administrative directive?

12 A. I'm familiar with the concept.

13 Q. And in fact, to your knowledge was such -- was such an
14 administrative directive issued to the complainant in this
15 case?

16 A. That's my understanding, yes.

17 Q. It's your understanding that one was issued to the accuser
18 and the accused?

19 A. No. Only to the --

20 Q. Accused. Correct?

21 A. Accused, correct.

22 Q. One to the male accused individual. Correct?

23 A. It could be female also. Directives are issued to alleged
24 respondents. But they are both male and female.

25 Q. Would you agree at the time that this was issued, there is

FELDBAUM - DIRECT (as-on-cross)

1 no facts known besides what a person says. Correct?

2 A. I don't know how Residence Life determined they should
3 issue this directive.

4 Q. But again, you're saying Residence Life. Do you agree with
5 me that document 1 at no time indicates Residence Life, in fact
6 it indicates Student Affairs. Correct?

7 A. I'm sorry. I missed the question.

8 Q. The document 1 that we talked about and you keep saying
9 Residence Life. But you would agree with me that Resident
10 (sic) Life is not on the document?

11 A. Correct.

12 Q. But in fact, Student Affairs, Office of Student Conduct is.
13 Correct?

14 A. And I can explain to you --

15 Q. Yes or no, ma'am?

16 A. -- why I think that is.

17 Q. It's a yes or no question.

18 A. Student Affairs is on this letter as --

19 MR. BERNSTEIN: Move to strike all the portions after
20 --

21 THE WITNESS: Residence Life is not.

22 MR. BERNSTEIN: Okay.

23 THE WITNESS: But the name of the person here is a
24 Residence Life staff.

25 MR. BERNSTEIN: Your Honor, I would ask to move to

FELDBAUM - DIRECT (as-on-cross)

1 strike as nonresponsive. There was no question pending.

2 THE COURT: So stricken.

3 BY MR. BERNSTEIN

4 Q. Looking at Exhibit 2, ma'am. Can you read the second
5 sentence?

6 A. "Among other things, my office is responsible for reviewing
7 reports of incidents that may implicate the University's policy
8 against sexual and gender-based harassment and misconduct."

9 Q. Okay. So you indicate -- you agree with me that it says
10 that it may. Correct? It may have violated. Correct?

11 A. That may implicate.

12 Q. May implicate. It may implicate. Correct?

13 A. Correct.

14 Q. So you agree with me that, in fact, it may not implicate?

15 A. Correct.

16 Q. Isn't it a fact that that -- and the date of this e-mail is
17 September 12th, 2016. Correct?

18 A. Correct.

19 Q. Is it your opinion -- withdrawn.

20 And is it your testimony today, that as you sit here
21 today, that the 60-day clock has not yet begun with regards to
22 this investigation?

23 A. The 60-day clock was in the Office of Student Conduct's
24 guidelines. I don't know what the guidelines were for the
25 Office of Sexual Misconduct --

FELDBAUM - DIRECT (as-on-cross)

1 Q. You are saying a Title IX Office is running a separate
2 investigation than the Office of Student Conduct? Is that what
3 you are telling us?

4 A. I'm saying that the investigation at this time is done by
5 the Office of Sexual Misconduct Prevention and Response.

6 Q. And --

7 A. At this same time, Student Conduct did say 60 days.

8 Q. Okay. So we can agree then if it's not done on the 8th,
9 that that was Residence Life, you can agree with me at a
10 minimum, the 60 days would have begun on September 12th?

11 A. I think we said 60 days from the date of complaint.

12 Q. Okay. Well, clearly this document of
13 September 12th indicates that a complaint was received. I
14 actually say it's the 8th, but you don't want to say it's the
15 8th. You agree, at a minimum, it's the 12th. Correct?

16 A. It acknowledges they received a report. I don't know if
17 they received a complaint.

18 Q. All right. So you are going to sit here now and tell the
19 Court that the Title IX director issued an e-mail directing a
20 student to come to his office because it may violate the
21 university's policy but that wasn't a complaint?

22 MR. KELLER: Objection. Argumentative, Your Honor.

23 MR. BERNSTEIN: It's cross-examination, Your Honor.

24 THE COURT: No. It's a fair question. I note the
25 objection. It is overruled. Ms. Feldbaum, can you answer the

FELDBAUM - DIRECT (as-on-cross)

1 question?

2 THE WITNESS: For our office in terms of what we would
3 consider to be a complaint, for Student Conduct it would be a
4 written report. It would be an allegation. I don't know
5 what -- again, it's not my office. I don't know what he's
6 referring to that he received.

7 BY MR. BERNSTEIN

8 Q. Are you saying that a written report or an allegation is
9 not a complaint? Is that what you're telling the Court?

10 A. I don't know what Paul meant.

11 Q. Okay. So you read this. You have no idea what
12 Mr. Apicella means?

13 A. I do not.

14 Q. So when he writes, among other things, My office is
15 responsible for reviewing reports of incidents that may have --
16 or implicate the university's policies on sexual harassment and
17 misconduct. I have received such a report and would like to
18 have the opportunity to discuss this situation further.

19 Does that sentence indicate to you that his office
20 received a complaint, or to you is a report different from a
21 complaint?

22 MR. KELLER: Your Honor, I'm going to object. Lack of
23 personal knowledge. It's not her e-mail. She has already
24 assessed she doesn't know what Mr. Apicella meant. I think
25 it's been asked and answered.

FELDBAUM - DIRECT (as-on-cross)

1 THE COURT: I'm not sure that it has been. I'm going
2 to overrule the objection. Can you distinguish the difference,
3 if there is one, between a report and a complaint Ms. Feldbaum?

4 THE WITNESS: I don't know if I can.

5 BY MR. BERNSTEIN

6 Q. Okay. Isn't it fact, ma'am, that on September 12th, 2016
7 as a result of this e-mail John Doe met with Mr. Apicella and
8 he was forced to change his class?

9 A. I'm not aware of that.

10 Q. Okay. I want you to assume for this question that on
11 September 12th, 2016 at this meeting with Mr. Apicella,
12 Mr. Apicella, based solely on this report of an incident, made
13 John Doe switch his class that he had with his accuser. Is
14 that Penn State policy?

15 A. Not to my knowledge, no.

16 Q. Okay. So if Mr. Apicella made John Doe switch his class on
17 this date, you would agree with me that he was violating Penn
18 State policy. Correct?

19 A. I -- no. I mean, I -- I mean, in terms -- there is
20 nothing, to the best of my knowledge, in our procedures that
21 references what would be done.

22 Q. Two questions ago, ma'am, you just told the judge that that
23 would not be the procedure, the policy, to change his class at
24 that time.

25 MR. KELLER: Your Honor. I'm sorry but...

FELDBAUM - DIRECT (as-on-cross)

1 THE COURT: It's all right.

2 MR. KELLER: It misstates her testimony.

3 THE COURT: I agree. I don't think that's what the
4 testimony is. The objection is sustained. If you would ask a
5 different question or re-ask the same question, Mr. Bernstein,
6 you are welcome to do that.

7 MR. BERNSTEIN: Thank you, Your Honor.

8 BY MR. BERNSTEIN

9 Q. Ms. Feldbaum, I want you to assume for this question that
10 on September 12th, 2016 when John Doe met with Mr. Apicella, he
11 was made to change his class. Would you agree that that would
12 be in violation of Penn State's policy?

13 A. No. But --

14 Q. Okay. Let me ask you this question. Do you know if the
15 female complainant, when -- according to Mr. Apicella, the
16 incident may indicate a violation -- implicate a violation,
17 whether she was asked to change her class?

18 A. I don't recall. I can tell you that as a rule we always
19 offer people to move when we know that there's going to be an
20 uncomfortable situation. So, you're using the word forced. I
21 don't know. He may have but our tendency is to offer the
22 opportunity to move one or both parties because of comfort.

23 Q. Okay. So, let me ask you this. I want you to assume for
24 this question that John Doe was not offered the opportunity but
25 was told, under no uncertain circumstances, that he was moving

FELDBAUM - DIRECT (as-on-cross)

1 his classes. Is that a violation of Penn State's policy?

2 A. Not to my knowledge.

3 Q. So is it your understanding that according to Penn State's
4 policy at this juncture -- and when I say this juncture,
5 meaning on September 12th, 2016 when John Doe gets a letter
6 from the Title IX coordinator indicating that an incident may,
7 may implicate the university's policies that the accuser was
8 offered the chance to switch her classes?

9 A. I'm sorry. What's the question for me?

10 Q. I'll withdraw it.

11 At this time, September 12th, 2016 --

12 A. Okay.

13 Q. -- is it your understanding that Penn State's policy was if
14 someone makes a complaint, a sexual harassment or a sexual
15 complaint, against someone else that the complainant is offered
16 the chance to move their classes as compared to the accused
17 told to move their class?

18 A. It's not a policy statement.

19 Q. So is it your -- so again, I want you to assume for this
20 question that John Doe was told under no uncertain
21 circumstances to change his class. Is that something that
22 Mr. Apicella did on his own?

23 MR. KELLER: Your Honor, objection. There is no
24 foundation that that happened. Lack of foundation.

25 MR. BERNSTEIN: Well, Your Honor, subject to

FELDBAUM - DIRECT (as-on-cross)

1 connection with the testimony of my client. I want -- and
2 hypothetically, Your Honor.

3 THE COURT: Noted. I'll overrule the objection.
4 Ma'am, can you answer the question?

5 THE WITNESS: Can you ask it again? I'm sorry.

6 MR. BERNSTEIN: I'm sorry. Can you?

7 THE COURT REPORTER: Sure.

8 (The record was read by the court reporter, as
9 requested.)

10 THE WITNESS: I can't speak to what Mr. Apicella would
11 do.

12 BY MR. BERNSTEIN

13 Q. Thank you. But you knew it would not be a policy of Penn
14 State to do that?

15 A. He was the Title IX coordinator and may have made
16 accommodations based on his position. I was not in that office
17 at that time.

18 Q. Is accommodations in your mind equivalent to making someone
19 do something?

20 A. It can be.

21 Q. Now, isn't it fact based on -- I want you to assume for
22 this question that on September 12th, 2016 John Doe was made to
23 leave his class that he had with his female accuser.

24 Isn't it a fact that on September 12th, 2016, Penn
25 State already had made a determination that John Doe was

FELDBAUM - DIRECT (as-on-cross)

1 responsible?

2 A. No.

3 Q. Now, I want you to turn back to Exhibit 9, Plaintiff's 9.

4 Do you agree with me that --

5 A. Are we on page 13 again?

6 Q. We are on page 13.

7 A. Okay.

8 Q. No. I'm sorry. This was the Code of Conduct and Student
9 Conduct Procedures that was in effect would be April 25th,
10 2016. Correct?

11 A. Correct.

12 Q. Now, if you want to turn to page nine.

13 A. Page nine?

14 Q. I'm sorry, page 13.

15 A. Okay.

16 Q. Do you see under special protocols for Title IX
17 allegations?

18 A. Yes.

19 Q. And you agree with me that based upon Mr. Apicella's letter
20 of September 12th, 2016 we were dealing with a Title IX
21 allegation. Correct?

22 A. We were -- yes, but we were not dealing with a conduct
23 process. The conduct process had not been initiated at that
24 time.

25 Q. Well --

FELDBAUM - DIRECT (as-on-cross)

1 A. And that refers to the conduct process.

2 Q. Let me ask you this. And you see under D, it goes one, and
3 then the next page says number two, investigative model?

4 A. Um-hmm.

5 Q. Yes?

6 A. Yes.

7 Q. So let me ask you this. As of September of 2016, which
8 model was selected with regards to John Doe's case?

9 A. I didn't speak to John Doe until January of 2017.

10 Q. Well --

11 A. He did not speak to Student Conduct, to the best of my
12 knowledge.

13 Q. Isn't it a fact that Kate Matic was assigned as the
14 investigator to this case beginning in September of 2016?

15 A. That's -- that's my understanding, yes.

16 Q. Okay. And so what you're -- I think I'm trying to
17 understand what you are saying now; is that Kate Matic was not
18 operating under the Code of Conduct student policies. Is that
19 what you're saying?

20 A. I'm saying that had the Office of Student Conduct been made
21 aware and our conduct process would have begun at that time --

22 Q. Ma'am --

23 A. -- this would have been the procedures we would have used.

24 Q. And isn't it a fact that that is the exact procedure that
25 was used by Penn State and Kate Matic commencing September of

FELDBAUM - DIRECT (as-on-cross)

1 2016?

2 A. You have to ask her.

3 Q. Well, I'm --

4 A. I don't --

5 Q. Are you familiar with -- well, let's go through it. Well,
6 let me just go one step further.

7 A. Okay.

8 Q. Later on you became involved in the case. Correct?

9 A. I did.

10 Q. You are familiar with all of the materials that were
11 submitted ultimately to the panel. Correct?

12 A. I am.

13 Q. Okay. So if we look at page 14, would you agree with me
14 under A that the case would be assigned to an investigator;
15 Kate Matic was assigned to the case. Correct?

16 A. Correct.

17 Q. And number two, the investigator will meet with the
18 complainant to collect information relative to the allegation.
19 The complainant may provide written statements and names and
20 other information related to the allegation. That happened in
21 this case. Correct?

22 A. I think she should say what she did.

23 Q. Ma'am, I appreciate what you think. But you saw the
24 packet. You were at the hearing. You reviewed all of the
25 documents. In fact, ma'am, on May 11th, 2017 you issued

FELDBAUM - DIRECT (as-on-cross)

1 charges. Correct?

2 A. Correct.

3 Q. And sanctions. Correct?

4 A. Correct.

5 Q. And you issued it based upon Kate Matic's investigative
6 report, did you not?

7 A. That's correct.

8 Q. So you reviewed it?

9 A. I did.

10 Q. Okay. So let's continue now, ma'am. Isn't it a fact that
11 the investigator, in this case Kate Matic, met with the
12 respondent to collect information? Correct?

13 A. Correct.

14 Q. Okay. And isn't it a fact that both the complainant and
15 the respondent may be accompanied by an advisor? Correct?

16 A. Correct.

17 Q. Let me ask you. Who was Jane Doe's (sic) advisor?

18 A. In September?

19 Q. Any time that you knew. The first time that you knew. It
20 was her father. Correct?

21 A. I never met her father.

22 Q. Her mother?

23 A. I met her mother in April or May. She also had an
24 attorney.

25 Q. So she had two advisors?

FELDBAUM - DIRECT (as-on-cross)

1 A. At the time that I started to meet with her, yes.

2 Q. At the same time?

3 A. Well, advisors meaning I met with her once with her mom.

4 At the hearing her mom was not present, her attorney was.

5 Q. Okay. And that's protocol, that they can have a different
6 advisor at different opportunities?

7 A. Absolutely.

8 Q. But you will agree and advise this Court that at some point
9 it was your understanding that at least her mother was an
10 advisor. Correct?

11 A. Her mother met with her and myself. I met with the two of
12 them together but...

13 Q. Does Penn State have a policy against retaliation?

14 A. Yes.

15 Q. And what is that policy?

16 A. I don't think I could tell it to you verbatim.

17 Q. Is it fair to say it's not a good thing, retaliation?

18 A. Yes.

19 Q. And is it fair to say that Penn State has an obligation to
20 protect both an accused and the accuser?

21 A. To protect both the accused and the accuser.

22 Q. From retaliation.

23 A. Oh, yes.

24 Q. And that's important to Penn State. Correct?

25 A. Correct.

FELDBAUM - DIRECT (as-on-cross)

1 Q. And in fact, if an accuser's parent who is also an advisor
2 was committing acts that caused harm to the accused, that would
3 not be a good thing. Correct?

4 A. Correct.

5 Q. I want you to turn to Plaintiff's 11. You've seen these
6 documents, haven't you?

7 A. I have.

8 Q. Let's just turn to the last page of this document, page
9 four. Do you see that at the top? Exhibit 11, the last page.

10 A. Okay.

11 Q. Okay. And it says, New information. The sexual assault
12 was more serious than I had described before. It was less than
13 a rape but it was more serious. The assaulter is shamelessly
14 free and enjoying his freedom. These screwed-up college rules
15 are crazy. The assaulter needs to be in prison. If society
16 does not put in prison, I am sure and will pray to God almighty
17 that someone else puts him in jail and he gets raped by someone
18 else.

19 What, if anything, did Penn State do to protect my
20 client, John Doe, from these threats of -- from Jane Doe's
21 (sic) parents? What did Penn State do? In fact, they did
22 nothing. Correct, ma'am?

23 A. Well, when I became aware of these, they were in -- it was
24 in April and --

25 Q. So you --

FELDBAUM - DIRECT (as-on-cross)

1 A. -- I don't know what had been done previously.

2 Q. You didn't do anything, did you?

3 A. No.

4 Q. That's pretty inflammatory. That's pretty bad stuff.
5 Would you agree?

6 MR. KELLER: Your Honor.

7 THE WITNESS: I don't see --

8 THE COURT: Just a moment. What's the objection, Mr.
9 Keller?

10 MR. KELLER: The objection is argumentative. I know
11 it's cross-examination but --

12 THE COURT: No. I think it's a fair question. Can
13 you answer the question, Ms. Feldbaum?

14 THE WITNESS: I don't see John Doe's name mentioned
15 here.

16 BY MR. BERNSTEIN

17 Q. Well, you read the investigative packet. Didn't, in fact,
18 Jane Doe (sic) admit that her parents wrote that, ma'am? I
19 mean really, is that really what we are going to do here today?
20 Isn't it a fact --

21 A. I don't recall that.

22 Q. You don't recall that?

23 A. I don't.

24 Q. Okay. Well, I want you to assume for the purpose of these
25 questions that Jane Doe -- Jane Roe acknowledged and admitted

FELDBAUM - DIRECT (as-on-cross)

1 that her parents wrote that.

2 A. That whole document, all four pages?

3 Q. It was a chat room, ma'am. And the part about -- yeah,
4 that her parents wrote that. That section I read, yes.

5 A. So the first paragraph on that page, they wrote? Okay.

6 Q. They are the person -- they are the people --

7 A. The version that I saw had different phone numbers. So
8 they didn't --

9 Q. The different phone numbers --

10 A. So it didn't have names.

11 THE COURT REPORTER: Excuse me.

12 MR. BERNSTEIN: My bad.

13 THE COURT: You have got to slow down. You can't talk
14 over one another. And Mr. Bernstein, you are speaking a little
15 too quickly for at least the court reporter and to some degree,
16 the Court. You've got to control it a little bit.

17 He has a distinct way of asking the question. You are
18 going to have to adapt to that. That's the way he asks the
19 question.

20 THE WITNESS: Okay.

21 THE COURT: Wait until he has finished asking the
22 question and then answer it. Don't interrupt her while she is
23 answering the question.

24 MR. BERNSTEIN: Absolutely.

25 THE COURT: Start again. Ask the question.

FELDBAUM - DIRECT (as-on-cross)

1 MR. BERNSTEIN: I'm so sorry.

2 BY MR. BERNSTEIN

3 Q. I want you to assume -- well, I'll withdraw the question.

4 Ms. Feldbaum, when you saw that in May, were you
5 shocked by what was written?

6 A. No.

7 Q. When you saw that in -- I'm sorry. When you saw that in
8 April, did you take any steps to see who wrote this and what
9 this is about?

10 A. No.

11 Q. That wouldn't have been important to you, to know who is
12 threatening and says someone should go to prison and be raped?
13 That's not important to you?

14 A. I did not see John Doe's name referenced in this.

15 Q. Well, let me ask you something, ma'am. Where did you see
16 this document?

17 A. In the investigative packet.

18 Q. Why would it be in the investigative packet if it wasn't
19 regarding John Doe or Jane Doe (sic)?

20 A. I --

21 Q. Why would it be there?

22 A. Typically it wouldn't.

23 Q. Okay. You would agree with me, ma'am, if this would have
24 anything to do with Jane Doe (sic), you certainly would have
25 inquired about it, wouldn't you have?

FELDBAUM - DIRECT (as-on-cross)

1 A. No. That wouldn't have been my role.

2 Q. You wouldn't have seen that and said, whoa, what is this
3 and just ask Kate Matic what is this? That's not something
4 that you would have done as the case manager?

5 A. No.

6 Q. Now, in fact, I want you to assume for these questions that
7 that was written by Jane Doe's (sic) parents against my client.
8 Would you agree that it would be Penn State's policy, if Penn
9 State was notified timely of this, for them to take some action
10 against Jane Roe and her family? Would you agree with me?

11 A. No.

12 Q. So if Penn State is notified and given these texts, as
13 you're telling this Court, they have no obligation to protect
14 my client? Is that what you're telling the Court?

15 A. Protect. I'm not -- I'm not sure exactly what you mean by
16 protect your client.

17 Q. Well, they are saying he should go to prison and get raped,
18 did they not?

19 A. Correct.

20 Q. Shouldn't Penn State take some precautions to protect the
21 student on their campus?

22 A. If the student had indicated to us he was concerned for his
23 safety, we absolutely would have.

24 Q. Okay. So I'm asking you again. If my client had told the
25 'powers that be' about these e-mails, wouldn't it have been

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1 Penn State's responsibility to protect him and take some
2 action?

3 A. If he indicated that he felt like he was at risk in terms
4 of safety or security, absolutely.

5 Q. So is it -- you're telling this Court that it's incumbent
6 upon him to say in addition to giving Kate Matic those
7 e-mails -- those texts, in addition to giving her those, you're
8 telling me and you're telling this Court that it's incumbent
9 upon John Doe to say please, help me, I'm scared for my safety;
10 those texts is not enough? Is that what you're telling this
11 Court?

12 A. I'm saying that it would be typical for me, when I see
13 something, to ask the student are you concerned for your
14 safety.

15 Q. And if they (sic) didn't ask if you are concerned for your
16 safety, would that be a violation of Penn State's regulations?

17 A. I don't think it would be a violation.

18 Q. What would it be, ma'am? Bad choice? Bad work? What
19 would it be?

20 A. I think any time it indicates a student may be at risk,
21 it's our role to ask them if they feel like they're at risk.

22 Q. I want you to assume for this question that Penn State did
23 nothing upon receiving these back in September/October of 2016;
24 for this question I want you to assume they did nothing.

25 THE COURT: Just a moment, Ms. Feldbaum. Go ahead,

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1 Mr. Keller.

2 MR. KELLER: Objection, Your Honor. There is no
3 foundation.

4 MR. BERNSTEIN: Your Honor, subject to connection.

5 THE COURT: I'll allow it. Ms. Feldbaum, can you
6 answer the question for counsel?

7 BY MR. BERNSTEIN

8 Q. Assume for the question that in September/October of 2016
9 that Penn State was given these copies of these Snapchats,
10 these texts of Snapchats, and Penn State did nothing, would you
11 agree with me that they violated their policies?

12 A. No.

13 Q. Let's go back to document 9, page 14. I think we left off
14 at E. The investigator will meet with and obtain information
15 from possible witnesses for other available information and
16 pertinent to the investigation will be collected.

17 Would you agree with me, Kat Matic did that back in
18 September of 2016? Correct?

19 A. I don't know when she did it, but she did do it.

20 Q. You reviewed the investigative packet, right, and there are
21 dates on there when she met with those people. Correct?

22 A. She met with them over a period of time.

23 Q. And the time included September?

24 A. It did.

25 Q. Correct. So she followed. This is what she did. Correct?

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1 A. That's my understanding, yes.

2 Q. Okay. Let me ask you this. Prior to coming here today,
3 did you review anything?

4 A. I did.

5 Q. What did you review?

6 A. I reviewed the investigative packet.

7 Q. Which is about 77 pages. Correct?

8 A. With attachments.

9 Q. Yeah. It's a whole packet. Right?

10 A. Um-hmm.

11 Q. About 77 pages. Correct?

12 A. Correct.

13 Q. Okay. So you agree with me these are things Kate Matic did
14 in preparing this packet. Correct?

15 A. Correct.

16 Q. So you agree with me that the policies followed by Penn
17 State in September of 2016 were governed by the April 25th,
18 2016 Code of Conduct. Correct, ma'am?

19 A. No.

20 Q. So Ms. Matic just did all of these things that are
21 enumerated right here in this handbook on her own?

22 A. She does not work for the Office of Student Conduct.

23 Q. So is there another policy that was in play at the time?

24 A. I'm assuming that there were procedures within her office.

25 Q. There's a Title IX Office. Correct?

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1 A. Correct.

2 Q. All Title IX investigations come through that office?

3 A. Correct.

4 Q. And these are the policies that specifically say, does it
5 not, ma'am, on page 13, special protocols for Title IX
6 allegations? That's what it says. Correct?

7 A. Correct.

8 Q. Okay.

9 A. But again, this is after -- if Student Conduct was managing
10 a case at that time, we would have used these procedures.

11 Q. Okay. But Title IX, it doesn't say anything about if
12 Student Conduct, does it, ma'am? It says these are the special
13 protocols for Title IX allegations. That's all it says.

14 A. It indicates when a University conduct process is
15 initiated. And a conduct process had not been initiated.

16 Q. So investigating allegations of non-consensual penetration
17 doesn't fit Student Conduct?

18 A. It would -- at that time a determination had not been made
19 it was coming to Student Conduct.

20 Q. So tell this Court what -- besides the fact that Kate Matic
21 has gone step-by-step in this policy, what procedures was she
22 following?

23 A. I'm not in her office.

24 Q. You reviewed the investigative packet. No?

25 A. I did.

FELDBAUM - DIRECT (as-on-cross)

1 Q. And it started back in September. No? Correct?

2 A. The investigative packet, right.

3 Q. Did you say what model were you using?

4 A. Did I ask that?

5 Q. Yeah.

6 A. No.

7 Q. In fact, ma'am, on May 1st, 2017, you told John Doe's
8 advisor that the policy had changed and that they were using a
9 different policy with him. Correct?

10 A. I told him that we would use the policy that was in place
11 at the time Student Conduct began their process.

12 Q. Okay. And in fact, you told her when she inquired how you
13 can change in the middle of an investigation, in fact you told
14 John Doe's advisor that she had a valid point and to talk to
15 your supervisor. Isn't that a fact?

16 A. Not -- that's not my recollection.

17 Q. Not your recollection. Well, is any of what I just said
18 correct? Did you tell her that she had a valid point?

19 A. I did. And I -- what I told her -- what my recollection is
20 is that I told her and John Doe that if they were concerned
21 about that that they should -- John should issue a letter to my
22 supervisor, Danny Shaha.

23 Q. What would they be concerned about?

24 A. Because of the confusion, that I made it clear to them that
25 it is typical for us to use the procedures that are in place

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1 when our process begins.

2 Q. So --

3 A. And our process did not begin until --

4 Q. So you --

5 A. -- initially, I think, in February.

6 Q. So is it -- are you telling this Court then that when the
7 investigation began, which we have established in September of
8 2016, that the procedures -- withdrawn. Let me ask you a
9 question.

10 What procedures did you use?

11 A. What procedures did I use?

12 Q. Yeah.

13 A. The procedures that were in place beginning in November.

14 Q. Okay. So you would agree with me -- and that's Exhibit 10.
15 Correct?

16 A. Correct.

17 Q. Whatever investigation model was being used by Kat Matic in
18 September of 2016 changed in the middle when your office got
19 involved. Is that what you're telling this Court?

20 A. No.

21 Q. Well, if Kat Matic began investigating this case in
22 September of 2016, you would agree with me that the policies
23 that you followed, which is Exhibit 10, which was revised
24 November 3rd, 2016, couldn't have been in effect. Correct?

25 A. Again, Kat is not in the office --

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1 Q. Ma'am --

2 THE COURT: Ms. Feldbaum, don't challenge the
3 question. So when you began the investigation in September of
4 2016, the policy that was revised that we're looking at as
5 Plaintiff's Exhibit 10 dated November 3, 2016, could not have
6 been in place?

7 THE WITNESS: Correct. Thank you.

8 BY MR. BERNSTEIN

9 Q. Okay. So when you got involved you used new procedures.
10 Correct?

11 A. Correct.

12 Q. Can you please show me the document where John Doe was
13 advised by Penn State that the procedures had changed in his
14 case?

15 A. Our notification that our procedures change is a notice on
16 the University's website.

17 Q. Correct. And the University website, which is -- all it
18 says is -- you get a link. Correct? And they say see the link
19 for the policies and procedures. It's the same link that was
20 there for April of 20 -- April 25th of 2016. Correct?

21 A. It's the same link?

22 Q. Yes.

23 A. Probably.

24 Q. It's the same one.

25 A. Probably, yeah.

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1 Q. So again, my question to you is show me the document that
2 John Doe, who is being investigated since September of 2016,
3 was notified that the procedures that are being used to
4 adjudicate him had changed. Please show me that document.

5 A. There isn't --

6 Q. There is none.

7 A. To my knowledge, there is not, because he wasn't involved
8 in the procedures in our office until January.

9 Q. But he was involved as the person being investigated under
10 some other procedure that you guys changed at some point.
11 Correct?

12 A. The University hired a Title IX coordinator.

13 MR. BERNSTEIN: Move to strike as nonresponsive, Your
14 Honor.

15 THE WITNESS: I'm sorry.

16 THE COURT: It's stricken. Can you answer the
17 question, Ms. Feldbaum?

18 THE WITNESS: Could you repeat it?

19 THE COURT: I will.

20 (The record was read by the Court, as requested.)

21 THE WITNESS: Correct. It's the you guys that
22 confuses me.

23 THE COURT: He means Penn State, I think.

24 MR. BERNSTEIN: I'm going to try to move this.

25 THE COURT: What would be helpful to the Court

FELDBAUM - DIRECT (as-on-cross)

1 probably, Mr. Bernstein, is to draw the distinction between
2 Plaintiff's Exhibit 9 and Plaintiff's Exhibit 10. I assume
3 there is a distinction.

4 MR. BERNSTEIN: Your Honor --

5 THE COURT: If that's germane, and I'm assuming you
6 believe it to be.

7 BY MR. BERNSTEIN

8 Q. In Exhibit 9 there was a quote, unquote, investigative
9 model. Correct?

10 A. Correct.

11 Q. And that's what Kate Matic -- what we went through, that's
12 what Kate Matic was doing step-by-step in accordance with the
13 policies of April 25th, 2016. Correct?

14 A. What she did follows this.

15 Q. Okay.

16 A. I don't know if it was in accordance with this because this
17 is not her document.

18 Q. But it followed it to the letter. Correct?

19 A. It certainly followed it very closely.

20 Q. Okay. So then in November of 2016, you changed policies
21 and you took out the word investigative model. Correct?

22 A. Correct.

23 Q. But you then just incorporated all of the steps in the
24 investigative model into just one procedure under a case
25 manager, which is you. Correct?

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1 A. Correct. But the investigation does not occur by the
2 Office of Student Conduct.

3 Q. Well, let me ask you this, ma'am. When you got involved
4 in -- when your office got -- you said January?

5 A. I believe.

6 Q. Okay. So I assume because you knew of new procedures,
7 you -- in your office, you discarded the whole entire
8 investigation that had been going since September. Correct?

9 A. We didn't have an investigation in our office.

10 Q. Well -- wow. Ma'am --

11 MR. BERNSTEIN: I apologize, Your Honor.

12 BY MR. BERNSTEIN

13 Q. Ms. Feldbaum, you used Kate Matic's investigative packet.
14 Correct?

15 A. Correct, in January.

16 Q. You did not start from fresh a new investigation in your
17 office in accordance with Exhibit 10, the rules revised on
18 November 3rd, 2016. Correct?

19 A. Correct.

20 Q. So you used stuff from an old investigation. You didn't
21 start new, did you?

22 A. Correct.

23 Q. Okay. So everything that was done previously, you
24 accepted?

25 A. Up to that point, correct.

FELDBAUM - DIRECT (as-on-cross)

1 Q. But now you changed -- whatever was done under that, you
2 now changed into these procedures. Correct?

3 A. Correct.

4 Q. And you never told John Doe you were doing that. Correct?
5 He was the subject of the investigation.

6 A. I was not aware that anyone had spoken to him about
7 University procedures.

8 Q. Okay. As the case manager, you are supposed to be fair and
9 impartial. Correct?

10 A. Correct.

11 Q. I'm assuming you are going to tell the Court that when you
12 got the case, you didn't already say he was guilty or
13 responsible. Correct?

14 A. Correct.

15 Q. You were giving him the fair inference. Correct?

16 A. Correct.

17 Q. But you didn't think it was necessary to tell him that you
18 are changing the procedures?

19 A. I was not aware that anyone reviewed our previous
20 procedures with him.

21 Q. Well, ma'am, you told us -- and I'm sorry for beating it,
22 but you told us that the investigation started under some
23 procedures. You want to say it's not this one because it
24 wasn't your office. But Kate Matic followed some procedures in
25 conducting an investigation. Correct?

FELDBAUM - DIRECT (as-on-cross)

1 A. I assume.

2 Q. And you accepted those. Correct?

3 A. Correct.

4 Q. But now you're applying different rules to it. Correct?

5 MR. KELLER: Your Honor, I'm going to object. Asked
6 and answered and cumulative at this point.

7 THE COURT: The objection is noted. I'm going to
8 overrule it.

9 Ma'am, can you answer the question? Do you understand
10 the question? Let me ask the question this way.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: By the way, is it Kat or is it Kate?

13 THE WITNESS: Kat.

14 THE COURT: So Kat Matic begins this investigation in
15 September of 2016.

16 THE WITNESS: Correct.

17 THE COURT: And when she does, Ms. Feldbaum, she is
18 following -- let's look at Exhibit 9 just a moment together.
19 She is following Know the Code, Office of Student Conduct, Code
20 of Conduct and Student Conduct Procedures that are noted as
21 Exhibit 9, as revised April 25, 2016.

22 So in September of 2016, five months later, this is
23 the Code of Conduct procedure that Kat Matic is following?

24 THE WITNESS: I don't know.

25 THE COURT: All right. And I think what Mr. Bernstein

FELDBAUM - DIRECT (as-on-cross)

1 is -- and I take your answer. What Mr. Bernstein is driving at
2 is that then some months later there's a new Code of Conduct
3 and Student Conduct Procedures, that is Plaintiff's Exhibit 10
4 that was revised November 3, 2016, and she was not -- Kat Matic
5 was not following those procedures.

6 Do you know the answer to that?

7 THE WITNESS: No.

8 THE COURT: And did you inform the plaintiff, Mr. Doe,
9 or his advisor at any time that there was a revision to the
10 Code, which I'm assuming is a substantive revision, that
11 perhaps should have been followed?

12 THE WITNESS: We -- we talked about it in a
13 conversation with John Doe and his advisor about the change in
14 the policy, and at that point I indicated he could provide a
15 request, if he was concerned about that change, to Danny Shaha.

16 THE COURT: And who is he?

17 THE WITNESS: He is my supervisor.

18 BY MR. BERNSTEIN

19 Q. And that conversation occurred in May. Correct?

20 A. That was when I was first aware that he was aware of any
21 prior procedures.

22 MR. BERNSTEIN: Move to strike as nonresponsive.

23 BY MR. BERNSTEIN

24 Q. That conversation occurred in May. Correct?

25 A. Correct.

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1 Q. Some nine months after the investigation began. Correct?

2 A. Correct.

3 Q. Now, are you familiar with the term impact statement?

4 A. I am.

5 Q. What's an impact statement?

6 A. It's an opportunity for a respondent or a complainant to
7 share what the impact of a situation is on them. It also
8 provides the opportunity for them to share any considerations
9 they would like to be shared in terms of determining sanctions,
10 if we determine to issue charges.

11 Q. Isn't it a fact that the impact statement is only submitted
12 to the hearing panel after a finding of responsibility is made
13 by the panel?

14 A. That's correct.

15 Q. Okay. So you agree with me that impact statement -- the
16 only purpose for an impact statement is to be given to the
17 panel. Correct?

18 A. No.

19 Q. No?

20 A. No.

21 Q. Well --

22 A. I also review the impact statement.

23 Q. I was going to ask you that. Let me go to page -- turn to
24 page 14.

25 A. Of?

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1 THE COURT: Of which exhibit?

2 MR. BERNSTEIN: Exhibit 10.

3 THE COURT: Page 14 of Exhibit 10.

4 BY MR. BERNSTEIN

5 Q. Do you see j(i); it's really hard with the type. It starts
6 in addition, both the complainant...

7 A. J? I'm sorry?

8 Q. J(i).

9 A. Okay.

10 Q. Do you see it, In addition, both the complainant and
11 respondent may provide an impact statement that will only --
12 that will only be shared with the hearing authority, should it
13 find that the respondent is responsible for violating the Code
14 of Conduct.

15 Correct?

16 A. Correct.

17 Q. Isn't it -- and this is the November 3rd, 2016 policy that
18 you were operating under. Correct?

19 A. Correct.

20 Q. Isn't it a fact that the impact statement's only purpose is
21 to be given to the hearing panel after responsibility.

22 Correct?

23 A. It's not the only purpose we have.

24 Q. I want you, please, take your time and look through the
25 policies and procedures, and tell me where the impact

FELDBAUM - DIRECT (as-on-cross)

1 statement -- the purpose, any other purpose of the impact
2 statement except what's in that sentence.

3 MR. KELLER: Your Honor, I'm going to object to the
4 question. It mischaracterizes what that sentence states. It
5 doesn't say that's the only purpose of it. It says when it
6 will be shared with the --

7 MR. BERNSTEIN: It says only.

8 MR. KELLER: Will only be shared with the authority
9 when. It doesn't say that's the only purpose for it.

10 MR. BERNSTEIN: So I asked her to show me any other
11 purpose in the policies. That's what I asked.

12 THE COURT: So noted. I will overrule the objection.
13 All right.

14 Ms. Feldbaum, are you able to answer that question?

15 THE WITNESS: I don't know if impact statement is
16 talked about anywhere else in this document.

17 BY MR. BERNSTEIN

18 Q. If I told you it wasn't, would that surprise you?

19 MR. BERNSTEIN: Well, this is important, Your Honor.

20 BY MR. BERNSTEIN

21 Q. Please take your time and look. I really -- it's very
22 important because the fact is, Ms. Feldbaum, you required my
23 client to provide to you an impact statement prior to you
24 finding him responsible and sanctioning him. Isn't that a
25 fact?

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1 A. I did not require it, no.

2 Q. You didn't?

3 A. I did not.

4 Q. Okay.

5 A. No one is required to provide an impact statement. They
6 are provided the opportunity to. And what I clarified is if
7 they would like for me to review an impact statement, that
8 would be their opportunity to provide one.

9 Q. Are you telling me that you didn't send an e-mail to my
10 client saying you needed the impact statement by a certain
11 date?

12 A. That was the deadline if he wanted to provide one.

13 Q. Why would he be required to provide an impact statement to
14 you, the person who is adjudicating his matter, finding him
15 responsible and sanctioning him? Why would -- show me where in
16 Penn State's policy he is required or even discussed, to give
17 it to the case manager prior to your adjudication. Tell me.
18 Show me.

19 A. It's not there.

20 Q. It's not. In fact --

21 A. Can I explain why we do it?

22 Q. Ms. Feldbaum. No. It's a violation.

23 You agree with me, it's not in the policy. The policy
24 only says will be heard -- will be shared with the hearing
25 authority, should it find the respondent responsible. That's

FELDBAUM - DIRECT (as-on-cross)

1 what the impact statement, your rules and policies say.

2 Correct?

3 A. Correct.

4 Q. By you requiring my client and taking a submission from him
5 and you just said and reviewing it prior to you, the judge and
6 jury --

7 A. I did not review it before I determined the impact
8 statement -- before I determined responsibility.

9 Q. You said that you -- but again, what authority -- what
10 authority do you have in -- under Penn State's policy in effect
11 on November 3rd, 2016 to get an impact statement. Tell us.
12 Show the Court where you have the authority to do it.

13 A. It doesn't appear there. It provides --

14 Q. It doesn't appear there because it's not there.

15 A. It provides more due process if they wish to provide it
16 that I would consider the impact on them before issuing a
17 sanction.

18 Q. You created that yourself. That's not your job.

19 A. Okay.

20 Q. So you would agree with me that you violated the
21 November 3rd, 2016 policy. Correct?

22 A. This is not a policy. These are our procedures.

23 Q. Okay. You violated their procedure. Correct, ma'am?

24 A. I -- one of the things that I did is different than the
25 procedures here.

FELDBAUM - DIRECT (as-on-cross)

1 Q. Okay. You violated it. The only person -- the only people
2 who were entitled to that impact statement hadn't even been
3 convened because you hadn't even found him responsible, and you
4 hadn't even sanctioned him. Correct? That wasn't until May
5 11th.

6 A. I did not review his impact statement until I determined
7 that I was going to issue charges.

8 Q. Then why did he have to have it in before the date you
9 issued charges?

10 A. Because the day I -- we try to move this process quickly.
11 So what we say in my first meeting with them is I have not
12 reviewed the packet. I am going to do that now. If I believe
13 that you are responsible, then at that point in time I will
14 review your impact statement.

15 Q. But --

16 A. They have five additional days from the time that I review
17 the packet to provide the impact statement.

18 Q. You had an opportunity to review the impact -- the
19 investigative report. It's your job --

20 A. Correct.

21 Q. Let's make it very clear here, ma'am. Let's let the
22 judge -- maybe it's my fault. You are the judge and the jury.
23 There's no hearing. You review the investigative report. You
24 determined that John Doe was responsible and you issued
25 sanctions. Correct?

FELDBAUM - DIRECT (as-on-cross)

1 THE COURT: Ms. Feldbaum, just a moment. Mr. Keller.

2 MR. KELLER: Objection to the form of the question.

3 There is no foundation. That's just wrong. There was a
4 hearing.

5 MR. BERNSTEIN: No, no, no. There was no hearing
6 until he wanted to fight the charges.

7 THE COURT: Don't argue amongst yourselves.

8 MR. BERNSTEIN: I apologize, Your Honor.

9 THE COURT: I understand. At this juncture
10 Ms. Feldbaum was the arbitrator of this matter, with the
11 understanding that there could be a hearing convened --

12 MR. KELLER: Objection, Your Honor. He keeps saying
13 final judge and jury, which is not accurate.

14 MR. BERNSTEIN: I didn't say final judge and jury.
15 BY MR. BERNSTEIN

16 Q. Isn't it a fact that --

17 THE COURT: Hold on. With that objection noted, the
18 objection is sustained. Perhaps you would like to rephrase
19 your question, with the Court's note.

20 BY MR. BERNSTEIN

21 Q. Under the November 3rd, 2016 policies and procedures --

22 A. Um-hmm.

23 Q. -- as case manager --

24 A. Um-hmm.

25 Q. -- you would have received the investigative packet.

FELDBAUM - DIRECT (as-on-cross)

1 Correct?

2 A. Correct.

3 Q. You would have reviewed the investigative packet. Correct?

4 A. Correct.

5 Q. And you yourself would have made a finding as to whether or
6 not the accused was responsible. Correct?

7 A. I wouldn't say that. I wouldn't use those words, no.

8 Q. Let me ask you this. You sanctioned him. Right?

9 A. What -- how --

10 Q. You gave a sanction. Correct?

11 A. A sanction was not put in place.

12 Q. Ma'am, you gave -- whoa.

13 A. Our process is such that we recommend --

14 MR. BERNSTEIN: Your Honor, there is no question
15 pending, respectfully.

16 THE COURT: Just wait for the question, Ms. Feldbaum.

17 BY MR. BERNSTEIN

18 Q. You indicated earlier that it's important that you want to
19 hurry along and do a speedy process. Correct?

20 A. Correct. We try to keep the process moving. Correct.

21 Q. Okay. This case had been going since September of 2016.
22 Where is the speed?

23 A. I received the packet in April.

24 Q. Did you inquire as to what was going on, why this has been
25 going on since September?

FELDBAUM - DIRECT (as-on-cross)

1 A. From my review of the investigative packet, it appeared to
2 me that the investigation continued --

3 Q. Okay.

4 A. -- throughout that entire time.

5 Q. Turn to page -- Exhibit 3 -- P-3. Are you there, ma'am?

6 A. Um-hmm.

7 Q. This is your e-mail of May 11th. Correct?

8 A. Correct.

9 Q. I have completed my review of the investigative packet and
10 you've determined -- I have determined that it is reasonable to
11 believe that a Code of Conduct violation has occurred.

12 A. Correct.

13 Q. Are you telling this Court that you did not find him
14 responsible. That doesn't mean the same thing?

15 A. Our burden of proof is preponderance. Reasonable to
16 believe was not -- I was not using the preponderance burden.

17 Q. Who's talking -- I'm not talking about the burden.
18 Whatever standard you want, you found him responsible that he
19 did the allegation.

20 A. I said it was reasonable to believe that a violation
21 occurred.

22 Q. And then you sanctioned him.

23 A. I assigned what I thought were the charges and sanctions
24 appropriate, correct.

25 Q. Correct. So you made a determination of whether by the

FELDBAUM - DIRECT (as-on-cross)

1 burden -- whatever burden you want to use, whether he did it or
2 not --

3 A. Um-hmm.

4 Q. -- and then sanctioned him. Correct?

5 A. I shared with him the sanctions I would assign, correct.

6 Q. Okay. So right then and there, you agree with me -- and if
7 he accepts the charge and sanction, the case is over. Correct?

8 A. No.

9 Q. If he accepts the charge and sanction, there is no hearing.
10 There is no hearing panel.

11 A. Correct.

12 Q. Correct?

13 A. But the complainant has the opportunity to also request a
14 sanction review. So the process would not have been over.

15 Q. Fine. If he accepts the sanction -- if the -- if the
16 complainant -- well, let me ask you the question.

17 In this case, did the complainant accept it?

18 A. Did the complainant accept it? It didn't matter because
19 the respondent contested.

20 Q. And it's only when they contest it does it go to a hearing
21 panel. Correct?

22 A. That's the -- that is the next step for contesting a
23 charge. It's a different step if you contest a sanction.

24 Q. That's where the impact statement pursuant to your policies
25 and procedures come into effect. Correct?

FELDBAUM - DIRECT (as-on-cross)

1 A. Correct.

2 THE COURT: All right. Well, we need to move this
3 along a bit, Mr. Bernstein. We still have one witness. I
4 hoped to have this matter completed by about quarter of six,
5 which is 25 minutes from now. We are far from that. So you
6 have to speed the plow in some fashion.

7 MR. BERNSTEIN: Your Honor, I now want to --
8 unfortunately there's a lot to do with this witness, Your
9 Honor.

10 THE COURT: There may be, but you've got to cut to the
11 chase.

12 MR. BERNSTEIN: Yeah, I know.

13 BY MR. BERNSTEIN

14 Q. Let's go to page 14 of Exhibit 10. Are you there, ma'am?

15 A. I am.

16 Q. Let's go, 6, vi.

17 A. I'm sorry. This exhibit? Which one?

18 Q. Exhibit 10?

19 A. I'm sorry. I thought you said 14.

20 THE COURT: Well, it's Exhibit 10, page 14.

21 THE WITNESS: Page 14. Okay. I'm there.

22 THE COURT: Subsection J, sub-subsection six in Roman
23 numerals.

24 MR. BERNSTEIN: Thank you, Your Honor.

25 THE WITNESS: Okay. I'm there.

FELDBAUM - DIRECT (as-on-cross)

1 BY MR. BERNSTEIN

2 Q. Okay. It says -- before I ask the question. You were --
3 you were present at the hearing panel. Correct?

4 A. Correct.

5 Q. "Each party will have the option to observe the other's
6 interaction with the hearing authority through remote video or
7 remote access, if reasonably practicable."

8 A. Correct.

9 Q. "The complainant and respondent may suggest questions to be
10 posed to the other party by and through the panel. Proposed
11 questions will be submitted to the hearing authority, which
12 will review the proposed questions for relevance and
13 appropriateness before they are posed to the other party."

14 Okay. Let's go back to the first sentence, Each party
15 will have the option to observe the other's interaction with
16 the hearing authority through the remote video access, if
17 reasonably practical.

18 A. Correct.

19 Q. I want to bring you back to June 6th, 2017 when you were in
20 the hearing panel. Correct? Okay?

21 A. Correct.

22 Q. Do you remember it?

23 A. Part of it.

24 Q. And Jane Roe was visible on a monitor. Correct?

25 A. Correct.

FELDBAUM - DIRECT (as-on-cross)

1 Q. The hearing panel did not allow my client to see Jane Roe.
2 Correct?

3 A. That was the request of Jane Roe.

4 Q. Can you please tell me what we just read where Jane Roe has
5 the right to request, and more specifically, where Penn State
6 has the right to deny my client from seeing his accuser?
7 Please tell me in that sentence where that is.

8 A. Well, we provided audio access. And I --

9 Q. Ma'am, I didn't ask -- that's not my question. My question
10 is show me where Jane Roe had the right to say I don't want him
11 to see me. Show me.

12 A. She has a right to make that request.

13 Q. She does or doesn't have the right?

14 A. She has the right to make that request.

15 Q. Where? Where? All it says, ma'am, you agree with me, the
16 respondent and the complainant will have the option -- I'm
17 sorry. Each party will have the option to observe the others.
18 I can choose to see the other one and the accuser can choose to
19 see me.

20 Nowhere, ma'am, does it say that the other party has
21 the right not to let the other party see them, does it?

22 A. To me, it was reasonably practicable --

23 Q. Ma'am --

24 A. -- that the complainant did not have to be seen by their
25 accuser.

FELDBAUM - DIRECT (as-on-cross)

1 Q. Then what -- it's not in the policy, is it? So wait.

2 Ma'am, you --

3 A. No.

4 Q. -- believe it's --

5 A. It's --

6 THE COURT REPORTER: Folks, one at a time.

7 THE COURT: Hold on. You're going too fast, back and
8 forth and over one another.

9 First off, are you familiar with the policy,
10 Ms. Feldbaum?

11 THE WITNESS: The procedure, yes.

12 THE COURT: What's the difference between a policy and
13 a procedure?

14 THE WITNESS: Procedures are usually our guidelines
15 and --

16 THE COURT: What's the policy?

17 THE WITNESS: When I think about the University policy
18 statement, I think of AD-85.

19 THE COURT: All right. We'll use your term. I'm not
20 going to challenge that. Looking at this procedure and looking
21 at this sub-subsection or any other parts of it, can you answer
22 Mr. Bernstein's question? Why don't you, in fact, just take a
23 moment and just read it twice yourself, as I just did. And
24 then Mr. Bernstein is going to ask you the question again.

25 (pause.)

FELDBAUM - DIRECT (as-on-cross)

1 BY MR. BERNSTEIN

2 Q. Can you show the Court where it says that Jane Roe has the
3 right to even ask or refuse to let her accuser see her?

4 A. It does not say --

5 Q. It doesn't. So you would agree with me on June 6th, 2017,
6 when the hearing panel granted her request not to allow my
7 client to see her, they violated Penn State's policy. Correct?

8 A. My interpretation of reasonably practicable is that if the
9 complainant indicated, we could make that determination.

10 Q. Where does it say that? Where does that give you the right
11 to deny my client his due process to see his accuser? Where do
12 you have that right to do it?

13 MR. KELLER: Your Honor, objection. He's clearly
14 arguing. And I know it's cross-examination. But it says it
15 right in the document. She has read the literal language right
16 from the document and explained what she thought it meant.

17 THE COURT: Well --

18 MR. BERNSTEIN: I asked --

19 THE COURT: You're saying that's the interpretation of
20 it.

21 MR. KELLER: That's her interpretation. She has
22 answered the question three times now.

23 THE WITNESS: If reasonably --

24 THE COURT: Each party will have -- this is the
25 language I'm reading. Mr. Bernstein, right, it's J(vi)?

FELDBAUM - DIRECT (as-on-cross)

1 Right?

2 MR. BERNSTEIN: Yes.

3 THE WITNESS: Yes.

4 THE COURT: So J(vi) says this, "Each party will have
5 the option to observe the other's interaction with the hearing
6 authority through remote video or audio access, if reasonably
7 practicable. The complainant and respondent may suggest
8 questions to be posed to the other party by and through the
9 panel. The proposed questions will be submitted to the hearing
10 authority, which will review the proposed question for
11 relevance and appropriateness before they are posed to the
12 other party."

13 So Ms. Feldbaum, is it your interpretation the first
14 part of it, that through remote video/audio access -- and Ms.
15 Roe was appearing by video, was she not?

16 THE WITNESS: They both were appearing by video.

17 THE COURT: I beg your pardon. That the language
18 dealing with video and audio access is -- the if reasonably
19 practicable language does not relate to that?

20 In other words, if it's reasonably practicable to have
21 video or audio access, then Penn State would endeavor to follow
22 it that way. Then if it's not reasonably practicable to have
23 video or audio access, well, then it just can't be done.

24 THE WITNESS: We don't require the participants to
25 participate in any particular manner. They may participate

FELDBAUM - DIRECT (as-on-cross)

1 over the phone. We don't require them to access a video
2 screen.

3 THE COURT: Maybe perhaps more importantly, you don't
4 require them to appear live and in person.

5 THE WITNESS: Correct.

6 THE COURT: That's really the most important part of
7 it.

8 THE WITNESS: Correct.

9 THE COURT: So if they can appear by video, or if they
10 can appear by audio, by way of some sort of telephone
11 conference call essentially --

12 THE WITNESS: Correct.

13 THE COURT: -- if that's reasonably practicable, Penn
14 State will allow that?

15 THE WITNESS: Correct.

16 THE COURT: Is that the correct interpretation of that
17 sentence, as you understand it?

18 THE WITNESS: To me?

19 THE COURT: "Each party will have the option --"

20 THE WITNESS: To me --

21 THE COURT: Hold on. "Each party will have the option
22 to observe the other's interaction with the hearing authority
23 through remote video or audio access, if reasonably
24 practicable."

25 If it's practicable, you'll try to implement that.

FELDBAUM - DIRECT (as-on-cross)

1 THE WITNESS: If I think it's reasonable.

2 BY MR. BERNSTEIN

3 Q. If you think -- may I? If you think it's reasonable. Can
4 you show me where in the provision it says you have the right
5 to make that determination?

6 A. That was my interpretation.

7 Q. Then who has -- we're looking at the rules, looking at the
8 procedures.

9 A. I know.

10 Q. Where does it say anyone has the right, whether it's you,
11 the hearing panel, whether it's the investigator and more
12 importantly Jane Roe, where did they have the right to deny my
13 client due process to see his accuser? Show me where it says
14 that besides your interpretation. It doesn't, does it, ma'am?

15 A. No.

16 THE COURT: But it does talk about option, doesn't it?

17 THE WITNESS: Yes.

18 THE COURT: "Each party will have the option --

19 THE WITNESS: Sure.

20 THE COURT: -- to observe the other's interaction with
21 the hearing authority through remote video or audio access, if
22 reasonably practicable."

23 BY MR. BERNSTEIN

24 Q. Right. And each party has the option to see the other, not
25 to make the determination who is going to see them.

FELDBAUM - DIRECT (as-on-cross)

1 A. But they would normally have the option if both parties
2 voluntarily chose to even use -- had the complainant only
3 participated by phone, there is no requirement that she needs
4 to participate by video.

5 Q. Okay. That's fine. Let's go with that.

6 A. Okay.

7 Q. But she did. She did participate by video. Correct?

8 A. She did choose to do --

9 Q. But it wasn't practicable -- if she was in some remote
10 place or wherever, if she was in a dorm, if it wasn't
11 practicable to appear by video, I agree that's what the policy
12 says, you do it over the phone.

13 But she appeared by video and said I don't want him to
14 see me. That's not in the policy, is it, ma'am?

15 A. No.

16 Q. Okay. And let's take a step back. My client didn't appear
17 fully by video. He was present there. He gave his statement.
18 He was in the room. Correct?

19 A. He did both. No. No.

20 Q. He didn't -- he was there?

21 A. During the -- he was physically in the building, but during
22 some of the hearing he is not -- he is there by video.

23 Q. That was at your request. Correct? Meaning -- when I say
24 you, meaning Penn State.

25 A. That's our process, that they not be in the same room so...

FELDBAUM - DIRECT (as-on-cross)

1 Q. But she -- but she never came into the room. Correct?

2 A. That's correct.

3 Q. She was always by video?

4 A. Right. So we always -- we always have two rooms available
5 for the respondent and the complainant.

6 Q. And my client came into the room. Correct?

7 A. At one point.

8 Q. And my client could have seen -- if Penn State allowed,
9 could have seen the same video that the hearing panel was
10 looking at and seen his accuser. Correct?

11 A. He could have.

12 THE COURT: Well, if he had been in the room, he could
13 have seen it.

14 THE WITNESS: Right. When he was in the room, she
15 could not see anything but the back of his head.

16 BY MR. BERNSTEIN

17 Q. Because you told him to face that way so he didn't see the
18 screen and see her. Correct?

19 A. That's the way the room is set up.

20 Q. You -- she asked not to allow him to see her and Penn State
21 acquiesced to her request. Correct?

22 A. Correct.

23 Q. Okay. Now, let's go above.

24 A. But --

25 Q. Let's go to five, v. So it's J(v).

FELDBAUM - DIRECT (as-on-cross)

1 A. Okay.

2 Q. The respondent and the complainant will each have the
3 option to personally address the hearing authority in person,
4 so that they may highlight the information that they feel is
5 most relevant to the hearing authority's deliberation and so
6 that they may respond to questions that may be posed by the
7 hearing authority and the investigation (sic), if any.

8 Correct?

9 A. Correct.

10 Q. That's the whole paragraph. Correct?

11 A. Correct.

12 Q. You were present on June 6th, 2017 during the hearing.
13 Correct?

14 A. Correct.

15 Q. And isn't it a fact when John Doe was addressing the
16 hearing panel, he was interrupted by his accuser, who he
17 couldn't see, Kate Matic, and then finally Mr. Perry, the
18 hearing chair, and told that he can't give certain information.
19 Isn't that a fact?

20 A. He was redirected to --

21 Q. Yes or no? He was speaking and he was stopped and said --

22 A. Correct.

23 Q. -- that's not what -- you can't give that. Correct?

24 A. You can't give that?

25 Q. You can't speak. That's not relevant. That's not the

FELDBAUM - DIRECT (as-on-cross)

1 issue here. You can only speak on what we deem is relevant.

2 Correct? He was stopped from giving his statement. Correct?

3 MR. KELLER: Object to the form of the question.

4 There is no foundation for that, Your Honor.

5 MR. BERNSTEIN: She was present. I'm asking if she
6 was there.

7 THE COURT: Ms. Feldbaum, you were present for the
8 June 6, 2017 hearing.

9 THE WITNESS: I was.

10 THE COURT: She was there. Objection overruled.

11 Do you understand the question?

12 THE WITNESS: I'm not sure. It sounds like --

13 THE COURT: Was the respondent prevented from
14 personally addressing the hearing authority at any time by
15 anyone else who was present, in person or by video, at the time
16 of the hearing?

17 THE WITNESS: He was asked to refocus his comments.

18 THE COURT: He was prevented from speaking.

19 BY MR. BERNSTEIN

20 Q. He was prevented from speaking. Correct?

21 A. No.

22 Q. But --

23 THE COURT: What is -- just a minute. What is -- what
24 was the term you used?

25 MR. BERNSTEIN: Refocused, Your Honor.

FELDBAUM - DIRECT (as-on-cross)

1 THE COURT: Refocused. That seems Orwellian.

2 Refocused.

3 THE WITNESS: He was reminded what the focus of the
4 panel was to be. He was reminded that his focus should be
5 responding to the investigative packet.

6 BY MR. BERNSTEIN

7 Q. Okay.

8 A. I don't believe anybody said quit speaking or don't talk.

9 Q. Okay. So -- well, I want you to assume for the purposes of
10 this question that he was stopped when he was giving background
11 information.

12 A. Okay.

13 Q. When he was talking about himself and his family. I want
14 you to assume that he was told not -- that's not relevant and
15 to move on.

16 A. Correct.

17 Q. Now, does that refresh your recollection of whether that
18 happened or not?

19 A. He was told it was not relevant.

20 Q. I want you now to go back to paragraph V.

21 A. I'm sorry. Paragraph?

22 THE COURT: J(v). He's saying V. He anglicizing the
23 roman numeral.

24 THE WITNESS: Thank you. I'm back.

25

FELDBAUM - DIRECT (as-on-cross)

1 BY MR. BERNSTEIN

2 Q. I want you to tell me where in that full paragraph he --
3 either the respondent or complainant is limited on what they
4 can say to the panel.

5 THE WITNESS: Most relevant to the hearing?

6 MR. BERNSTEIN: No. No. Read the whole sentence in
7 context. The respondent and complainant will each have the
8 option to personally address the hearing authority in person,
9 so that they, the person speaking, may highlight the
10 information that they, the person speaking, feels is most
11 relevant to the hearing authority's deliberation.

12 So it's what the person speaking feels is most
13 important, that they want to tell at the hearing. That's what
14 that paragraph says.

15 And Penn State violated my client's rights again, did
16 they not, Ms. Feldbaum?

17 MR. KELLER: Your Honor, objection. It's compound.
18 And he's testifying.

19 THE COURT: Well, it's a compound question. Let's
20 overlook the fact that it is. I'll note the objection.
21 Mr. Keller, you are technically correct. Your objection is
22 overruled.

23 Ms. Feldbaum, can you answer that question? I think
24 the question deals with the word relevance, as Mr. Bernstein is
25 highlighting it. Saying it's what the respondent, or in this

FELDBAUM - DIRECT (as-on-cross)

1 case the respondent or the complainant, believes, feels --
2 believe is the better word, but they have used the word
3 feels -- is most relevant to the hearing authority's
4 deliberation.

5 So if the respondent believed that that was relevant
6 to the hearing authority's deliberation, he was prevented from
7 giving the statement as to his background or his -- whatever it
8 was that he was prevented from --

9 THE WITNESS: Correct.

10 THE COURT: All right. So he was prevented from
11 giving that information that he believed was relevant, because
12 the chairman of the board did not think it was relevant and
13 said no, it's not relevant, move on.

14 THE WITNESS: Correct.

15 THE COURT: Thank you. And that's not what that
16 policy reads. That's not how the policy reads. And
17 arguably -- would you agree? A relevance issue is not a
18 determination to be made by the chairman of the hearing board,
19 at least as this reads.

20 THE WITNESS: Correct.

21 THE COURT: It is what the complainant or the
22 respondent believes is relevant to help the hearing board
23 adjudicate -- to adjudicate their -- excuse me -- to assist in
24 the adjudication and deliberation of the matter.

25 It's what that person -- so the person could say look,

FELDBAUM - DIRECT (as-on-cross)

1 I was -- my family was from India, and I was born in India. We
2 immigrated to this country in whatever year it was, when I was
3 three years old. We settled in California. And this is what
4 my father does for a living. And this is what my mother does
5 for a living. And this the school that I went to. And on and
6 on it goes.

7 And the chairman of the hearing board thinks well, I
8 don't really care. It really isn't his place to say. That is
9 what the respondent wished to get out, because that's what he
10 thought was important; that he should have been given the
11 opportunity to do that. And he was prevented from doing that,
12 at least in part.

13 THE WITNESS: Correct.

14 THE COURT: Because apparently the chairman didn't
15 think that was relevant, to the chairman's --

16 THE WITNESS: To the deliberation.

17 THE COURT: To the chairman's deliberation. But it
18 really wasn't the chairman to make that determination at that
19 point. He had to listen to those questions today, just as I've
20 had to listen to some questions that aren't at all helpful to
21 me this afternoon, politely, up until about this point where
22 I'm going to ask people to move on. See?

23 THE WITNESS: Right. Thank you.

24 THE COURT: Okay.

25

FELDBAUM - DIRECT (as-on-cross)

1 MR. BERNSTEIN: Judge, I'll move on, I think, to my
2 last area.

3 THE COURT: Good.

4 BY MR. BERNSTEIN

5 Q. If we could go to J(ii), ma'am.

6 A. Okay.

7 Q. "The hearing authority will be permitted at least five
8 business days to individually review the investigative packet.
9 During this time they may submit additional questions to the
10 investigator or request additional follow up by the
11 investigator. If new information is acquired by the
12 investigator, both parties will be permitted to review this new
13 information and respond within an appropriate amount of time,
14 to be determined within the discretion of the investigator."

15 Do you see that?

16 A. Um-hmm.

17 Q. Do you agree with me, ma'am, that the policy, the
18 procedure, whatever term we're using, says that the hearing
19 panel is to get the investigative packet five business days
20 before the hearing. Correct?

21 A. Correct.

22 Q. That's not open to interpretation, is it, ma'am?

23 A. No.

24 Q. You would agree with me that in this case my client's
25 rights were violated when Penn State did not comply with this

FELDBAUM - DIRECT (as-on-cross)

1 section. Isn't that a fact?

2 A. I believe that they did receive the investigative packet.

3 Q. They did. At 12 to 14 hours before the hearing. Isn't it
4 a fact that they got it on June 5th?

5 A. Not the investigative packet.

6 Q. Well, the investigative packet includes all the statements.
7 Correct?

8 A. The investigative packet includes all the statements by the
9 respondents. If you go to J --

10 THE COURT: Let me cut to the chase. Is it the full
11 77-page packet that Ms. Feldbaum has some familiarity with?

12 MR. BERNSTEIN: Yes, Your Honor.

13 THE COURT: That would include the attachments?

14 MR. BERNSTEIN: Correct.

15 THE COURT: That's what we're talking about.

16 THE WITNESS: That's what they received.

17 BY MR. BERNSTEIN

18 Q. And they also received the comments by the individuals, the
19 complainant?

20 A. That's the response to the charges.

21 Q. Correct. And that's --

22 A. Which is not really part of the investigative packet.

23 Q. Well, ma'am, why don't you just go up a little to J and
24 where J defines what the investigative packet is. "Which will
25 include the relevant information collected and any relevant

FELDBAUM - DIRECT (as-on-cross)

1 written responses to the charges." Relevant written responses
2 to the charges are what the complainant and the respondent
3 submit. Correct?

4 A. Correct.

5 Q. Those are included -- that investigative packet includes
6 the investigative report, the 77 pages and the complainant and
7 respondent --

8 A. Correct.

9 Q. So isn't it a fact, ma'am -- if I have to go through the --
10 isn't it a fact that the panel did not receive the
11 investigative packet as defined by Penn State's policies and
12 procedures until the day before?

13 A. Correct.

14 Q. So you agree with me that Penn State violated my client's
15 rights in violating this subsection in terms of when the panel
16 got the investigative report?

17 THE COURT: Just a moment, ma'am. Mr. Keller.

18 MR. KELLER: Objection. Asking a lay witness for a
19 legal conclusion.

20 THE COURT: No, I think she can answer that question.
21 The objection is overruled. Ma'am, can you answer the
22 question?

23 THE WITNESS: Would you ask the question --

24 THE COURT: Ask the question again, Mr. Bernstein.

25 MR. BERNSTEIN: Could I have it read back?

FELDBAUM - DIRECT (as-on-cross)

1 THE COURT REPORTER: Sure.

2 MR. BERNSTEIN: Thank you.

3 (The record was read by the court reporter, as
4 requested.)

5 THE WITNESS: No.

6 BY MR. BERNSTEIN

7 Q. Well, you just told us, ma'am, that the investigative
8 report was given the day before. Correct?

9 A. The 77 pages were given the week before.

10 Q. Ma'am -- I don't care, ma'am --

11 A. So they had them when --

12 Q. Ma'am, respectfully I don't care when they got the
13 investigative report. I'm talking about the packet. Penn
14 State defines the packet. I don't define it. You don't define
15 it. Penn State defines the packet, relevant written responses
16 to charges, ma'am. They didn't get those five days before, did
17 they?

18 A. Correct.

19 Q. They got that the day before, hours before the hearing.
20 Correct?

21 A. A day before.

22 Q. Okay. Was it 24 hours before? Was it eight hours?

23 A. I don't recall.

24 Q. Okay. So they got it the day before. They got it on
25 June 5th. You would agree with me, ma'am, that that is a

FELDBAUM - DIRECT (as-on-cross)

1 violation of J(ii), is it not, ma'am?

2 A. A violation?

3 Q. Yeah. It violates the rule. The hearing authority would
4 be permitted at least five business days to individually review
5 the investigative packet. That did not happen here, did it?

6 A. No, that did not happen.

7 Q. My client, on June 1st, handed in, I guess, a final
8 statement. Are you familiar with that?

9 A. Um-hmm.

10 Q. Yes?

11 A. I am familiar. He would have turned it in to me.

12 Q. Okay. So if you can turn to page four. I'm sorry.
13 Exhibit 4. My apologies, Your Honor. I'm almost done with
14 this witness. Do you see that?

15 A. I do.

16 Q. If you just turn to the next one, to Exhibit 5.

17 A. Um-hmm.

18 Q. Do you see that?

19 A. I do.

20 Q. Would you agree with me that -- withdrawn.

21 Do you see the words redacted, redacted?

22 A. I do.

23 Q. Then on page two, the whole page is redacted?

24 A. Yes.

25 Q. Page three, the whole page is redacted?

FELDBAUM - DIRECT (as-on-cross)

1 A. I see that.

2 Q. Now, if you turn to page four -- I'm sorry -- Exhibit 4,
3 page two and page three have a lot of text, do they not?

4 A. Correct.

5 Q. Can you first tell me who at Penn State redacted my
6 client's June 1st statement and created document 5?

7 A. The Office of Sexual Misconduct Response and Pre-- I forget
8 their name. The Title IX Office.

9 Q. So it wasn't you on June 1st?

10 A. No.

11 Q. Under what authority do they have to redact pages and pages
12 and paragraphs of an accused's statement? What policy is that?

13 A. I -- they are determining relevance.

14 Q. They arbitrarily determined what the accused had the right
15 to say. Correct, ma'am?

16 A. Arbitrarily?

17 Q. I'm sorry? What?

18 A. I'm sorry. Arbitrarily?

19 Q. Yeah. They decide --

20 A. They determine what's relevant to the case.

21 Q. They determine what the accused can submit and what is
22 relevant?

23 A. Correct.

24 Q. Penn State makes that determination?

25 A. Correct.

FELDBAUM - DIRECT (as-on-cross)

1 MR. BERNSTEIN: I have no further questions, Your
2 Honor?

3 THE COURT: Thank you. I think at this time it would
4 be best to take a very brief break. The Court will stand in
5 recess for ten minutes.

6 MR. BERNSTEIN: No disrespect. I would just ask that
7 the witness don't talk to counsel.

8 THE COURT: Ms. Feldman -- thank you, Mr. Bernstein.

9 Ms. Feldman, I will just give you a polite admonition
10 not to consult with your counsel. You remain under oath. The
11 Court will remain in recess until 5:55 p.m.

12 The Court will rise.

13 THE COURTROOM DEPUTY: All rise.

14 (A recess was taken from 5:45 to 5:55 p.m.)

15 THE COURT: Before we begin the cross-examination,
16 although I'll certainly allow you to do that, Mr. Keller, how
17 much are we going to get accomplished? Where are we going, at
18 least from the plaintiff's perspective, Mr. Bernstein? We are
19 going to finish this witness. Mr. Keller is going to
20 rehabilitate her with some questions, I think. And then where
21 are we going?

22 MR. BERNSTEIN: Your Honor, I have gone through my --
23 I will streamline. There are two other witnesses I want to
24 call of the defendants; one, I have literally six questions and
25 then one, maybe 15, 20 minutes. And then I have to put my

1 client on.

2 THE COURT: How long will he be?

3 MR. BERNSTEIN: I will try to streamline.

4 Realistically, Your Honor, in my terms of questioning, maybe a
5 half an hour.

6 THE COURT: This is what we can do for you. I have
7 sentencings tomorrow morning. So that's out. But I have had
8 something come off the calendar, and I can pick up with you
9 tomorrow afternoon to complete this. I want you both to be
10 given the opportunity to be heard, and I want the parties to
11 feel that they've been heard without being rushed.

12 And while I'm not critical of your efforts to try to
13 get the matter resolved under your own speed this morning and
14 this afternoon, the reality is that was six hours; six hours of
15 what I hoped to be maybe concluding by now, by 6:30, by a
16 reasonable time. I expected that we might go beyond the 5:00
17 period, and I have no objection to that. That's, of course,
18 why we're here. But it can't go on into the evening. It can't
19 go on all night. And you're tired out anyway. And my staff
20 is. And to a certain degree, I am.

21 You might want to think -- I'll give you just a minute
22 to confer as lead counsel as to when you would like to pick
23 back up. I can give you some hours tomorrow afternoon, if that
24 would be helpful in completing the matter.

25 And we'll still finish with Ms. Feldbaum, at least,

1 this evening and maybe one of the shorter witnesses. But we
2 want to get this wrapped up, I think, by 7:00. You are going
3 to start to get a little foggy yourselves. It's hard to do
4 this.

5 Mr. Keller, Mr. Bernstein, do you want to speak about
6 that? Do you want to continue this into tomorrow afternoon?
7 Janel, when could we start, 2:00?

8 Let's go off the record for a moment.

9 (Off-the-record discussion.)

10 MR. BERNSTEIN: I'm sorry, Your Honor. Did you
11 say what time?

12 THE COURT: So Counsel, what I can give you tomorrow
13 is a block of time between 1:30 and 4:30. You may not need the
14 whole thing, and I'm not suggesting you take the whole thing.
15 But I would -- I will give you a block of time tomorrow
16 afternoon.

17 Because remember, we are -- there is a D-day. So it's
18 somewhat exigent in that respect. And I need to -- I need to
19 think about this. I need to research it. I have your papers.
20 I don't know whether I'm going to need anything else from you.
21 I don't think so. Your briefs are very complete. There's a
22 reply brief that you sent in the other day that I haven't read.
23 I just skimmed it very quickly this morning.

24 But I have Penn State's response, which was -- I don't
25 know who did that, Ms. Edmunds, perhaps, who is not here to

1 receive the compliment. I'm not saying you didn't, Mr. Keller,
2 but her name was on it. It's well done. You tell her when she
3 comes back. Did she participate in putting it together?

4 MR. KELLER: It was a joint effort but she --

5 THE COURT: Here she is now. Well, Ms. Edmunds, you
6 stepped out. And I don't know how long you have been at the
7 Bar. But you don't receive a lot of compliments from federal
8 judges, probably; most of whom are haughty and don't want to
9 acknowledge that anyone does good work other than them, and
10 occasionally the Court of Appeals, in the rare case when they
11 are affirmed. But if you have something to do with writing the
12 brief, you did a good job. It was very helpful.

13 And of course your papers were good, Mr. Bernstein. I
14 don't know who did that for you. I'm assuming you did or will
15 take credit for it and not the main partner in the firm,
16 perhaps. That's very helpful.

17 So I don't think I need more papers on this, but you
18 might want to think about whether you want to make use of
19 tomorrow afternoon to give full and complete examination of
20 some of these other witnesses and then allow me, you know, next
21 week to really endeavor to put pen to paper and then issue a
22 proper Memorandum Opinion and resulting Order by the end of
23 next week so you know where you are going on this. So do you
24 need --

25 MR. BERNSTEIN: Just one second.

1 THE COURT: And Mr. Keller, you speak to your
2 co-counsel and the University.

3 (pause.)

4 (Off-the-record discussion, **counsel.**)

5 MR. KELLER: Your Honor, so for defendants, we're
6 prepared to pick up tomorrow after Ms. Feldbaum is completed.

7 THE COURT: Did you want to put the brief witness on
8 this evening? I don't know how long this cross-examination
9 will take.

10 MR. BERNSTEIN: My understanding his cross -- his
11 rehabilitation might be longer than my direct.

12 MR. KELLER: Consistent with our discussion that I
13 would ask all of the questions at once instead of re-calling
14 Ms. Matic, I actually have a fair amount for her.

15 THE COURT: Is Ms. Matic the brief witness for you but
16 the longer witness for the defense?

17 MR. KELLER: That's correct, Your Honor.

18 THE COURT: What about Ms. Feldbaum?

19 MR. KELLER: Yes, we can finish with Ms. Feldbaum.
20 The only request is if we're okay with Ms. Matic --

21 THE COURT: This is Ms. Matic, who is here today?

22 MR. KELLER: Yes. And Mr. Perry, whose been
23 sequestered all day, could they go home?

24 THE COURT: Yes. Let's be clear. You are willing to
25 accept my offer to come back tomorrow, complete the testimony

1 tomorrow commencing at 1:30, and hopefully having it completed
2 by about 4:30 tomorrow afternoon so my staff can leave at 4:30.
3 I won't be leaving at 4:30. They would like to anyway.

4 If Ms. Matic and Mr. Perry are not going to testify
5 now, they are excused. So maybe the court security could lead
6 Ms. Matic back to where Mr. Perry is sequestered, or it may be
7 she knows that herself, and maybe escort them downstairs out of
8 the building and come back up, please.

9 We'll complete the testimony of Ms. Feldbaum now.

10 MR. KELLER: Thank you, Your Honor. Counsel asked the
11 question that I assume when we say finish with Ms. Feldbaum
12 that she will not have to come back tomorrow. Is that --

13 THE COURT: That would be -- the question, Mr.
14 Bernstein, with Mr. Keller is we're going to complete fully the
15 examination of Ms. Feldbaum this evening?

16 MR. BERNSTEIN: It is my absolute intention, Your
17 Honor. No, in terms of I will finish my questioning. My only
18 concern is if Ms. Matic said something and I would have to call
19 in rebuttal. But I can't envision that happening.

20 THE COURT: We'll assume that she is done for today.

21 MR. KELLER: That she --

22 THE COURT: Will complete examination in full today.
23 And if there was some issue, perhaps -- Ms. Feldbaum, would you
24 be available tomorrow by, say, a telephone conference call if
25 needed?

1 THE WITNESS: Yes.

2 THE COURT: We could make arrangements if we had to
3 get ahold of you. We will let your counsel make those
4 arrangements with you. But you're available and it would be a
5 day that you would work typically and you could be available?

6 THE WITNESS: Yes.

7 THE COURT: With that said, Mr. Keller, would you care
8 to cross-examine?

9 MR. KELLER: Yes. Thank you, Your Honor.

10 THE COURT: You may do so.

11 CROSS EXAMINATION

12 BY MR. KELLER

13 Q. Good evening, Karen.

14 A. Good evening.

15 Q. Karen, can you take a look at Plaintiff's Exhibit 1?

16 A. Okay.

17 Q. This is an administrative directive you were shown earlier
18 in your testimony. Correct?

19 A. Correct.

20 Q. Do you know who Kyle Kowal is?

21 A. He's a Residence Life coordinator.

22 Q. Can you turn, Karen, to Exhibit P-14. Do you recall being
23 asked about this document that appears to be from the Office of
24 the Bursar previously?

25 A. Yes.

FELDBAUM - CROSS

1 Q. Did you draft this?

2 A. No.

3 Q. Do you know who did?

4 A. No.

5 Q. Do you know, if it did go out, when it went out?

6 A. No.

7 Q. Did you have any role in the content of this document?

8 A. No.

9 Q. Karen, can you turn to P-10, which is the Code of Conduct
10 that we've been talking about a bit tonight and specifically
11 page 13.

12 A. Okay.

13 Q. And there's a subsection D titled special protocols for
14 Title IX allegations. Correct?

15 A. Correct.

16 Q. And these protocols, at least by the time you had the case,
17 as you testified, applied to the allegations against John Doe.
18 Correct?

19 A. Correct.

20 Q. And can you read the first two sentences for the Court
21 please?

22 A. "The University's Office of Sexual Misconduct Prevention
23 and Response has responsibility for investigating allegations
24 of Title IX violations. The Office of Sexual Misconduct
25 Prevention and Response will typically investigate such

FELDBAUM - CROSS

1 allegations utilizing the process articulated at
2 <http://titleix.psu.edu>.

3 Q. Thank you. Do you know what office Kat Matic was in?

4 A. The Office of Sexual Misconduct Prevention and Response.

5 Q. Can you turn, Karen, to Exhibit D-11. So D, as in dog, 11.
6 Do you have it in front of you?

7 A. I do.

8 Q. And is the website at the bottom of this document [http://](http://titleix.psu.edu)
9 titleix.psu.edu?

10 A. Correct.

11 Q. Then it goes on to say PSU-Title-IX-procedures. Correct?

12 A. Correct.

13 Q. Can you turn to page seven of 11 of this document?

14 THE COURT: What exhibit is it, Mr. Keller?

15 MR. KELLER: It's D-11, Your Honor.

16 THE COURT: Thank you.

17 MR. KELLER: Okay. Do you have it, Your Honor?

18 THE COURT: I do.

19 BY MR. KELLER

20 Q. And page seven, Ms. Feldbaum, are you on the page?

21 A. Yes.

22 Q. The top of the page is titled formal resolution process.
23 Correct?

24 A. Correct.

25 Q. And there's a name Danny Shaha and then an address. Right?

FELDBAUM - CROSS

1 A. Correct.

2 Q. And then can you read the beginning of the -- actually,
3 I'll read it to you, and just tell me if I've read it
4 correctly. The second sentence below that says, "Reports will
5 be investigated and managed by professional staff, Title IX
6 decision panel members, or University conduct board members who
7 have been trained annually on issues related to domestic
8 violence; dating violence, sexual assault, stalking and
9 victimization, and on how to conduct an investigation and
10 hearing process that protects the safety of the victims and
11 promotes accountability."

12 Did I read that correctly?

13 A. Correct.

14 Q. Then there's a bullet at the bottom, formal investigations.
15 Correct?

16 A. Correct.

17 Q. It discusses below that -- are you familiar with this
18 document?

19 A. I am.

20 Q. Okay. Really, my question -- I don't need to go through,
21 in the interest of time, all of this tonight. Is this the
22 document that is cross referenced in Exhibit P-10 at page 13?

23 MR. BERNSTEIN: Note my objection, Your Honor.

24 THE COURT: Pardon me?

25 MR. BERNSTEIN: Note my objection as to her knowledge.

FELDBAUM - CROSS

1 She didn't write it.

2 THE COURT: Objection noted. It's overruled.

3 Ms. Feldbaum, can you do a compare and contrast to
4 those two exhibits?

5 THE WITNESS: No, I'm sorry. Well, yes, it's the
6 same. It's referencing this document.

7 BY MR. KELLER

8 Q. And previously, Ms. Feldbaum, you were shown at some
9 length, Exhibit P-9, that was the Code of Conduct effective
10 April 25th, 2016. Can you turn to that for a moment? Do you
11 have that document?

12 A. I do.

13 Q. And we've already spoken a little bit about this, but on
14 page 13 under special protocols the first paragraph says,
15 "Alternatively, if the senior director determines that the
16 investigative model articulated in section D, 2 should be
17 utilized to manage the case, he will refer the case to that
18 process."

19 Did I read that correctly?

20 A. Yes.

21 Q. And then section D, 2 talks about the case being assigned
22 to an investigator. Correct?

23 A. Correct.

24 Q. So do you agree that under the April code or the November
25 code, Title IX allegations could be referred to an

FELDBAUM - CROSS

1 investigator?

2 A. Yes.

3 Q. And Ms. Matic was an investigator. Correct?

4 A. Correct.

5 Q. Karen, do you recall when you first met with John Doe?

6 A. I don't recall a particular date.

7 Q. Did you know who he was before you met him as part of this
8 process?

9 A. I did not.

10 Q. Did you recall Mr. Doe needing to reschedule a meeting with
11 you?

12 A. Yes.

13 Q. Do you remember why?

14 A. He was ill.

15 Q. And did you question the voracity of his illness?

16 A. No, I did not.

17 Q. Can you turn to Exhibit D-8? Do you have Exhibit D-8 in
18 front of you? Actually, let me know when you have Exhibit D-8
19 in front of you.

20 A. D-8, yes.

21 Q. D-8. And I don't think we need to go through all of them,
22 but we can, if you would like. It appears to be a series of
23 e-mails to and from Mr. Doe, his advisors, you and an
24 administrative support person in your office regarding
25 rescheduling this meeting. Correct?

FELDBAUM - CROSS

1 A. Correct.

2 Q. And the final e-mail at the top of this string is from you
3 to Marybeth Sydor. Is that correct?

4 A. That's correct.

5 Q. Who is Ms. Sydor?

6 A. She is John Doe's advisor.

7 Q. Is she in the courtroom?

8 A. She is.

9 Q. And can you just read for the Court what you wrote to
10 Ms. Sydor?

11 A. "Thanks, Marybeth. We have no need for a note from the
12 health center. We assume that John Doe is being truthful.
13 Thanks again, Karen."

14 Q. You agreed to move the meeting. Correct?

15 A. Correct.

16 Q. You were asked about the impact statement. Why did you ask
17 for an impact statement from John Doe in May 2017?

18 A. Because prior to determining recommended sanctions, we
19 would give the respondent and the complainant an opportunity to
20 share any information they wished to share that they feel would
21 be important for the person who is making a determination of
22 sanction to consider. It's their one opportunity to
23 essentially tell us anything they would like to tell us before
24 we make a recommendation.

25 Q. Was the impact statement -- strike that.

FELDBAUM - CROSS

1 In the impact statement was John Doe, and we can look
2 at that time if we need to, explaining the impact this entire
3 process has had on him?

4 A. Yes.

5 Q. And was that something you wanted to consider as part of
6 your assessment of the charges?

7 MR. BERNSTEIN: Objection, Your Honor, to irrelevant.
8 Whether what she wanted or not is not in the policy. So
9 what -- why she wanted or what she wanted is irrelevant. The
10 fact of the matter is it's not protocol.

11 THE COURT: I agree. But it explains why she did what
12 she did, which may be of some benefit to the Court. So I note
13 the objection. The objection is overruled.

14 Ms. Feldbaum, can you answer the question?

15 THE WITNESS: I'm sorry.

16 THE COURT: Ask the question again, please.

17 MR. KELLER: Can you read it back?

18 THE COURT REPORTER: Sure.

19 THE WITNESS: I'm so sorry.

20 THE COURT REPORTER: Oh, it's okay, not a problem at
21 all.

22 (The record was read by the court reporter, as
23 requested.)

24 THE WITNESS: Absolutely.

25

FELDBAUM - CROSS

1 BY MR. KELLER

2 Q. And did you?

3 A. Yes. For consideration for the sanction.

4 Q. You did not make the final decision of responsibility in
5 this case. Correct?

6 A. Correct.

7 Q. And you did not issue the final sanctions in this case.
8 Correct?

9 A. Correct.

10 Q. We've already looked at the charge letter that you issued
11 to John Doe. Correct?

12 A. Correct.

13 Q. Do you recall if you offered to speak with him, if he had
14 any questions about it?

15 A. I did.

16 Q. Did he take you up on that?

17 A. I don't believe so.

18 Q. If he had wanted to speak with you, would you have spoken
19 with him?

20 A. Absolutely.

21 Q. Was he permitted to issue a response to the charge, to your
22 charge?

23 A. Yes.

24 Q. Did he do that?

25 A. Yes.

FELDBAUM - CROSS

1 Q. Can you turn to Exhibit D-12, the last one in the binder.

2 Do you have that?

3 A. Yep.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. It's a note from John Doe. It says, "I have appended the
8 student conference summary form and my response to the charges.
9 Please let me know that you have received this e-mail."

10 So that's him, John Doe, responding and also providing
11 his response for the panel.

12 Q. And attached to that document there's an eight-page
13 document, May 17, 2017 response to the charge and sanctions
14 notification. Correct?

15 A. Correct.

16 Q. Did you read that document?

17 A. I did.

18 Q. And then following that statement there's a page called
19 student conference summary form. Is that right?

20 A. Right.

21 Q. What is this form?

22 A. When I make my determination, this is what I would give to
23 him to determine what option he would like to make, accepting
24 or contesting or requesting a sanction review.

25 Q. And did John, at some point, fill this out and return it to

FELDBAUM - CROSS

1 you?

2 A. Yes.

3 Q. And he contested the charge and the sanction. Correct?

4 A. Correct.

5 Q. So it goes to a hearing, Title IX decision panel at that
6 point?

7 A. Correct.

8 Q. What's your role, if any, before the hearing -- strike
9 that. Do you assist with the logistics of the hearing
10 prehearing?

11 A. Yes.

12 Q. Did you in this case, as one of those acts of your effort
13 before the hearing, provide the responder and his advisor
14 access to the final investigative packet?

15 A. I did.

16 Q. Do you know when you did that?

17 A. I believe I did that multiple times.

18 Q. Can you turn to Exhibit D-6, please? Do you have that in
19 front of you?

20 A. I do.

21 Q. And do you recall -- well, the subject of this document is
22 panel date set and deadline for statement. Correct?

23 A. Correct.

24 Q. And this is from you to John Doe and his advisor. Is that
25 right?

FELDBAUM - CROSS

1 A. Correct.

2 Q. And the first sentence says, "Thanks again for your
3 patience in determining the best method of sharing the report
4 this morning." Did I read that correctly?

5 A. Correct.

6 Q. Do you recall if you shared the report, if not before, on
7 May 23rd, 2017, with John Doe and his advisor?

8 A. Before? I don't recall.

9 Q. Did you share it on that date, May 23rd, 2017?

10 A. Yes.

11 Q. Did you also tell John and his advisor in this e-mail the
12 date the panel was going to meet?

13 A. I did.

14 Q. Did you offer him the option to participate in person or,
15 if he wished, via Adobe Connect or Zoom?

16 A. Yes.

17 Q. Did you explain to him that he would have the opportunity
18 to respond to the charge by providing in writing those aspects
19 of the investigative packet which you feel are most critical
20 for the panel's consideration?

21 A. Yes.

22 Q. Did you tell him that on the day of the panel you will have
23 the opportunity to again highlight those points you feel are
24 most significant?

25 A. Correct.

FELDBAUM - CROSS

1 Q. What did you mean by that sentence?

2 MR. BERNSTEIN: Objection, Your Honor. Objection,
3 what she meant. It's black and white. Most important to him.
4 So it's what John Doe felt was significant. What she now wants
5 to incorporate what she meant by that is irrelevant, because
6 it's what it says. It's black and white. She wrote what she
7 wrote.

8 THE COURT: Mr. Keller.

9 MR. KELLER: Well, Your Honor, first that just struck
10 me as more testimony. But I believe she is entitled to answer,
11 when it says highlight the points, the highlights of what? The
12 prior sentence talks about the investigative packet.

13 MR. BERNSTEIN: The points that you feel are most
14 important.

15 MR. KELLER: He's testifying here.

16 THE COURT: We're not sure what that is, Mr.
17 Bernstein. The objection is noted. It's overruled. If you
18 want to ask the question again.

19 MR. KELLER: I do.

20 THE COURT: Go right ahead.

21 BY MR. KELLER

22 Q. Karen, the sentence we're looking at says, "On the day of
23 the panel you will have the opportunity to again highlight
24 those points you feel are most significant."

25 Did I read that correctly?

FELDBAUM - CROSS

1 A. Yes.

2 Q. When you wrote that, what did you mean when you wrote
3 highlight those points you feel are most significant?

4 A. I'm referring to the sentence before, those aspects of the
5 investigative packet which you feel are most critical.

6 Q. And then can you read the last sentence of that paragraph
7 to the Court, please?

8 A. "It is important to note that this is not an opportunity to
9 provide new information but rather to focus in on the
10 information already provided."

11 Q. Do you recall if John Doe or his advisor responded to
12 this --

13 A. I don't.

14 Q. After the hearing was completed, did John and his advisor
15 want to have access to the audio of the hearing?

16 A. Yes.

17 Q. As part of your role helping with the logistics, did you
18 make that available?

19 A. I did.

20 Q. Did you make that available to both John and his advisor?

21 A. Yes.

22 Q. Did John appeal the decision of the hearing panel?

23 A. Yes.

24 Q. Do you know where that appeal -- who that appeal went to?

25 A. Dr. Yvonne Gaudelius.

FELDBAUM - CROSS

1 Q. Is she also the student conduct appeal officer?

2 A. Yes.

3 Q. And do you know -- if you know, what information she
4 considers on appeal?

5 A. She considers all of the information that is pertaining to
6 the case, so...

7 Q. Do you facilitate providing that information to her?

8 A. I do.

9 Q. Can you turn to Exhibit P-10, page 19, Karen?

10 A. I'm sorry?

11 Q. Page 19.

12 A. Of P-10?

13 Q. P, yes.

14 A. Okay.

15 Q. And is there a section on that page titled appeals?

16 A. Yes.

17 Q. And does that list in subsection C three grounds for
18 appeal?

19 A. Correct.

20 Q. Did Ms. -- is it Gaudelius?

21 A. Gaudelius.

22 Q. Did she send her final appeal decision to you?

23 A. I don't recall if it was sent to me directly or just to our
24 office.

25 Q. Can you look at Exhibit P-8?

FELDBAUM - REDIRECT

1 A. Yes.

2 Q. Do you recognize this document?

3 A. I do.

4 Q. What is it?

5 A. This is her decision letter that would have come via
6 e-mail.

7 Q. And it's, at least, addressed to you?

8 A. Yes, correct.

9 Q. Did you, in turn, convey this to the parties?

10 A. I did.

11 Q. And in this document does Ms. Gaudelius list the same three
12 grounds for appeal that are in the Code provision we just
13 looked at?

14 A. Yes.

15 Q. Karen, John Doe's a man. Right?

16 A. Correct.

17 Q. Did his gender influence your decision to issue charges and
18 recommended sanctions?

19 A. No.

20 MR. KELLER: I don't have any other questions. Thank
21 you.

22 THE COURT: Thank you. Redirect examination,
23 Mr. Bernstein.

24 MR. BERNSTEIN: Thank you, Your Honor.

25

FELDBAUM - REDIRECT

1 REDIRECT EXAMINATION (as-on-cross)

2 BY MR. BERNSTEIN

3 Q. Ms. Feldbaum, did the "Dear Colleague Letter" influence
4 your decision in this case?

5 A. "Dear Colleague Letter". No.

6 Q. Are you sure? I know you took a long time to think about
7 it.

8 A. I'm trying to figure out if it influenced. I -- I didn't
9 refer to the "Dear Colleague Letter" at all during this case.

10 Q. Let me ask you this. Is it possible that in your
11 conversations and everything we discussed earlier about the
12 round-tables, is it possible that the "Dear Colleague Letter"
13 affected your determination in this case?

14 A. No.

15 Q. Now, you talked about providing the packet to the appeals
16 officer. Correct?

17 A. Correct.

18 Q. You don't know what she reviewed, did you?

19 A. I'm sorry?

20 Q. You don't know what she reviewed, if any of it. Correct?

21 A. Correct.

22 Q. Okay. Let me ask you this question. You rendered a
23 decision that was more reasonable than not that he was
24 responsible, and you gave sanctions. Correct?

25 A. Correct.

FELDBAUM - REDIRECT

1 Q. Do you know what sanctions you leveled?

2 A. Yes. They're in here.

3 Q. Do you know -- without looking, you're here testifying in
4 court today with Mr. Doe here, do you -- can you tell the Court
5 what you sanctioned him?

6 A. Yes.

7 Q. What are they?

8 A. Conduct suspension through Fall 2017, one semester of
9 conduct suspension. And it may say either educational and/or a
10 psychological assessment with either appropriate educational or
11 counseling, to be determined. Or something -- the language is
12 something to that effect.

13 Q. Isn't it a fact that John Doe, in exercising his right of
14 appeal which Penn State provided him, was punished when the
15 appellate panel, hearing panel added the sanction of preventing
16 him from attending the premed program?

17 MR. KELLER: Objection. Objection, Your Honor. There
18 is no foundation, and it misstates documents that aren't even
19 in evidence.

20 THE COURT: Mr. Bernstein.

21 MR. BERNSTEIN: Okay. It's not in evidence? Okay.

22 So let's go to P -- I think it is in evidence. So let's go to
23 P-7.

24 BY MR. BERNSTEIN

25 Q. Are you there, ma'am?

FELDBAUM - REDIRECT

1 A. I am.

2 Q. And this is the June 7th, Office of Student Conduct, Title
3 IX decision panel. Correct?

4 A. Right. It's addressed to the Office of Student Conduct.

5 Q. I apologize. Thank you. And this is their decision.
6 Correct?

7 A. Correct.

8 Q. And under decision panel sanctions --

9 A. Um-hmm.

10 Q. -- disciplinary -- let's make life a little easier for you
11 and the Court. The first one says disciplinary suspension
12 through Fall of '17. Correct?

13 A. Correct.

14 Q. Now let's refer to P-3, which is your May 11th sanction.

15 A. Okay.

16 Q. You did a conduct suspension through Fall of 2017.
17 Correct?

18 A. Correct.

19 Q. Is that what you mean -- is that the same as the
20 disciplinary suspension through Fall of '17?

21 A. Correct.

22 Q. Next, "Required to successfully complete counseling
23 evaluation/assessment under the direction of the Office of
24 Student Conduct."

25 Going back to your document, P-3, "Educational program

FELDBAUM - REDIRECT

1 and/or counseling required for readmission to be determined by
2 assessment." Is that the same thing?

3 A. Yes.

4 Q. Okay. And you have no other sanctions. Correct?

5 A. Correct.

6 Q. But after exercising his right to appeal your decision, he
7 was punished with two additional sanctions, including loss of
8 on-campus housing and the recommendation of lost participation
9 in the coveted prestigious Penn State Jefferson PMM program.
10 Isn't that correct?

11 THE COURT: Just a moment, Ms. Feldbaum.

12 MR. KELLER: Objection, Your Honor. That is not what
13 the actual wording of that sanction says. It mischaracterizes
14 the document.

15 MR. BERNSTEIN: I'll withdraw it, Your Honor. Let's
16 go to P-7.

17 BY MR. BERNSTEIN

18 Q. You agree with me that after exercising his right of appeal
19 as provided to him by Penn State, he was hit with a third
20 sanction with loss of on-campus living privileges. Is that
21 correct?

22 A. Correct.

23 Q. Additionally, he was hit for the sanction of recommendation
24 for the loss of participation in the Penn State Jefferson
25 premed medical program as long as someone is a participant of

FELDBAUM - REDIRECT

1 this program. Correct?

2 A. Correct.

3 Q. You didn't find those, did you? You didn't give those
4 sanctions. Correct?

5 A. I did not.

6 Q. This was after he exercised his right to an appeal.
7 Correct?

8 A. After more information is available, yes.

9 Q. Oh. Are you saying that when you did your evaluation, all
10 the evidence wasn't in?

11 A. I don't ask questions of either party.

12 Q. So your decision -- so you are saying now there is no
13 evidence. What new evidence was before -- you were at the
14 panel, ma'am. You just said there new evidence.

15 A. New information.

16 Q. New information?

17 A. Right.

18 Q. I thought new information wasn't allowed at the hearing;
19 only what's in the investigative packet. Isn't that what you
20 told my client at the hearing? What new information now?

21 A. They are permitted to ask questions, like John Doe is
22 permitted to ask questions of the complainant.

23 Q. Okay.

24 A. I do not ask any questions, nor do either party allow to
25 ask questions.

FELDBAUM - REDIRECT

1 Q. And in fact, the questions -- he submitted 22 questions and
2 all but four were blocked because they were asking for new
3 evidence or irrelevant.

4 So my question to you is, ma'am, you were the panel,
5 you were at the hearing. What new evidence came about that
6 warranted these two new sanctions?

7 A. I don't know.

8 Q. The fact is there was nothing. He was penalized for
9 absolutely no reason but for exercising his right to appeal.
10 Isn't that a fact, ma'am?

11 A. No.

12 Q. But how do you know, because you said you weren't involved
13 in the decision?

14 A. It would be counter to our training of our panel to make a
15 determination based solely on a student's request to appeal.

16 Q. Well, then what was --

17 A. If that were to be the case, we would have no need --

18 Q. What was it based upon?

19 A. The information that they received in the panel.

20 Q. But I thought there is no new evidence allowed. Isn't that
21 what the rules say? Didn't you just say in the letter, in the
22 e-mail and you told this Court that you prevented him from
23 speaking because there can only be what's in the investigative
24 panel (sic)? You can't have it both ways, Ms. Feldbaum.

25 MR. KELLER: Your Honor, objection. I'm not even sure

FELDBAUM - REDIRECT

1 that's a question.

2 MR. BERNSTEIN: I'll withdraw the question, Your
3 Honor.

4 THE COURT: What was the objection?

5 MR. KELLER: I'm not even sure it was a question. It
6 was a statement. It's asked and answered. She's explained new
7 information. He keeps saying new evidence. She has explained
8 what she meant by that. He doesn't like the answer. I feel
9 like it's harassing the witness.

10 THE COURT: You're going to withdraw the question?

11 MR. BERNSTEIN: Yes.

12 THE COURT: Go ahead, Mr. Bernstein.

13 BY MR. BERNSTEIN

14 Q. Is new information allowed at the hearing panel?

15 A. Yes.

16 Q. Because my client --

17 A. Questions are asked so...

18 Q. Let's go back to your letter, to your e-mail to my client,
19 D-6. In the second paragraph, the sentence in addition. Okay.
20 In addition. That's something more. Correct?

21 A. Correct.

22 Q. In addition. You are adding something?

23 A. Correct.

24 Q. Correct. "On the day of the panel you will have the
25 opportunity to again highlight those points you feel are most

FELDBAUM - REDIRECT

1 significant."

2 That's the sentence that you chose to write. Correct?

3 A. Right, because he hadn't done that with me.

4 Q. You agree with me that if you wanted to, you could very
5 easily have written, In addition on the day of the panel you
6 have the opportunity again to highlight those points that are
7 in the investigative packet you feel are most significant.

8 You could have written that. Correct, ma'am?

9 A. Correct.

10 Q. You didn't, did you?

11 A. No.

12 Q. You, in fact, wrote a sentence that mimics Penn State's
13 procedures saying that my client had the right to speak to the
14 panel about things that he thought were significant and
15 highlight to them. Your sentence mimics Penn State's policies
16 and procedures, which your panel violated on June 6th, 2017.

17 Isn't that correct?

18 MR. KELLER: Objection, Your Honor.

19 THE COURT: Mr. Keller.

20 MR. KELLER: Objection. I was okay with the question
21 up until the which your panel violated part. It's
22 argumentative. And I actually think it's been asked and
23 answered.

24 THE COURT: I think it was partly asked and answered.
25 But I will -- I will sustain the objection. Mr. Bernstein,

FELDBAUM - REDIRECT

1 perhaps you can retailor your question except for your
2 conclusion; the suffix, if you will.

3 MR. BERNSTEIN: Your Honor, can we ask the
4 stenographer to read it back?

5 THE COURT: Mrs. Fausnaught, would you read back that
6 question, minus the last clause?

7 THE COURT REPORTER: Sure.

8 (The record was read by the court reporter, as
9 requested.)

10 THE WITNESS: I was not intending to mimic the policy.
11 I was intending to -- I was intending to clarify again the
12 point I made before.

13 BY MR. BERNSTEIN

14 Q. But if you wanted to highlight the point you made before,
15 you very easily could have inserted the words those points that
16 are in the investigative packet. Correct? But you didn't.

17 A. I was talking about two different times.

18 Q. All right. Thank you.

19 A. One I was talking about prior to convening, and the next I
20 was talking about on the day of the panel. So I was telling
21 him he had two opportunities to do something similar, which he
22 didn't have the opportunity to do with me.

23 MR. BERNSTEIN: Your Honor, I just move to strike the
24 nonresponsive portion of that answer.

25 THE COURT: So stricken.

FELDBAUM - REDIRECT

1 BY MR. BERNSTEIN

2 Q. Let's move to Defendant's 11. The Office of Sexual
3 Misconduct Prevention and Response. You indicated -- when does
4 this policy go into effect?

5 A. I do not know.

6 Q. So you have no idea if this was in effect at the time of my
7 client's investigation. Correct?

8 A. I do not know.

9 Q. So when you said, so we have no idea if these policies or
10 procedures were followed in this -- for my investigation.
11 Correct?

12 A. The question I had, was it the same website location, and
13 it is.

14 Q. My question is you had no idea about these procedures and
15 policies?

16 A. Correct.

17 Q. So you agree with me that these policies and procedures
18 provide absolutely no information relevant to my -- the
19 investigation of my client to this Court. Correct?

20 There is nothing relevant in this because you don't
21 know if they were applicable at the time. Correct?

22 A. I can't say if it was relevant or not.

23 Q. Well, you can't say when they were in effect. So if you
24 can't tell us when they were in effect, you can't tell us if
25 they were used. Correct?

FELDBAUM - REDIRECT

1 A. I don't know --

2 THE COURT: Do you understand the question?

3 THE WITNESS: I don't, because if I --

4 THE COURT: That's fine. Why don't you rephrase and
5 restate, Mr. Bernstein?

6 BY MR. BERNSTEIN

7 Q. You agree with me that you don't know when these and
8 Defendant's 11 came into effect. Correct?

9 A. Correct.

10 Q. So you don't know if during the investigation of my client
11 these policies were in effect. Correct?

12 A. Correct.

13 Q. So you agree with me that these policies provide -- shed no
14 light to the Court with regards to the investigation of my
15 client. Correct?

16 A. But they could have been in effect at that time.

17 Q. Anything could have happened but you can't -- you're a
18 witness here. You can't tell the Court that they were.
19 Correct?

20 A. It's not my document.

21 Q. So you -- so at no time -- you're not -- maybe I
22 misunderstood your direct -- or your cross. You're not telling
23 the Court that these rules and procedures are what was followed
24 during my client's investigation. Correct?

25 A. I did not -- we did not go over all of these procedures.

FELDBAUM - REDIRECT

1 Q. If you went over any of the procedures, they were not --
2 you cannot tell the Court that these were in play during
3 September of '16 and June of '17. Correct?

4 MR. KELLER: I'm going to object, Your Honor. I think
5 it's asked and answered.

6 THE COURT: The question has been asked and answered.
7 She doesn't know.

8 MR. BERNSTEIN: Thank you, Your Honor.

9 BY MR. BERNSTEIN

10 Q. Let's move along to -- let's go back to D-10 and D-9. I'm
11 sorry. Plaintiff's 9 and Plaintiff's 10.

12 MR. BERNSTEIN: My apologies, Your Honor.

13 BY MR. BERNSTEIN

14 Q. And on D-10 (sic) page 13 in the first par -- in paragraph
15 D, 1.

16 A. Okay. So it's D or P?

17 Q. It's P-10. I'm sorry. I know it's late. I'm going to
18 finish this up as soon as I can. P-10, page 13.

19 A. Yes.

20 Q. D, 1.

21 A. Okay.

22 Q. Do you remember Mr. Keller asking you questions and this is
23 how we got referred to that website?

24 A. Yes.

25 Q. The Office of Sexual Misconduct Prevention and Response.

FELDBAUM - REDIRECT

1 Correct?

2 A. Right.

3 Q. And you indicated Ms. Matic worked for them. Correct?

4 A. Correct.

5 Q. Let's go to P-9, and we look at page 13 and 14. You agree

6 with me that Penn State's policies and procedures effective

7 April 25th, 2016, there is absolutely no reference of the

8 University's Office of Sexual Misconduct Prevention and

9 Response, OSMPR. Correct?

10 A. Correct.

11 Q. So when Ms. Matic started the investigation in September of

12 2016, what office was she with?

13 A. The Office of Student Misconduct Prevention and Response.

14 Q. The one that's referenced in D -- I'm sorry -- in Exhibit

15 P-10, page 13?

16 A. Yes.

17 Q. But there is no reference of that in the April '16 version.

18 Correct?

19 A. Correct.

20 Q. Okay. So and Ms. -- Mr. Keller asked you under D-10 --

21 P-10, D, the special procedures, you can use an investigator.

22 Correct?

23 A. P-10 or --

24 Q. P-10. First we're on the P-10, the November 3rd, 2016

25 version.

FELDBAUM - REDIRECT

1 A. Okay. I'm sorry.

2 Q. Which you say you adjudicated my client under?

3 A. Okay. And what was your question? I'm sorry.

4 Q. An investigator. Mr. Keller asked you if an investigator
5 can be used in the November 3rd, 2016 version and the
6 April 23rd, 2016 version. Right?

7 A. Can an investigator be used?

8 Q. Yeah, and assigned?

9 A. Yes.

10 Q. And you said yes. So under both policies it's the same, an
11 investigator can be used. Correct?

12 A. Correct.

13 Q. Let's turn and we have already established -- withdrawn.

14 Let's turn to P-9. You testified that you're a case
15 manager. Correct?

16 A. Correct.

17 Q. And under the November 3rd, 2016 policies, once the
18 investigator finds a report, they forward it to you. Correct?

19 A. That's P-10?

20 Q. I'm now asking you --

21 A. I'm sorry.

22 Q. I'm asking your understanding of your everyday job as --

23 A. No. I understand. You just referenced P-9.

24 Q. You know what, let me take a step back. I apologize, and I
25 move to strike this.

FELDBAUM - REDIRECT

1 Under the November 3rd, 2016 policies and
2 procedures --

3 A. Okay.

4 Q. -- an investigator is assigned. They put the report
5 together and they give it to you. Correct? The case manager.
6 They give it to a case manager?

7 A. We get it once the investigation is complete.

8 Q. That's the policy in the November 3rd, 2016. Correct?

9 A. Correct.

10 Q. And Mr. Keller asked you if an investigator can be used in
11 the April 25th, 2016 policies under the investigative model.
12 Correct?

13 A. Correct.

14 Q. And you said yes. Right?

15 A. Correct.

16 Q. Okay. Let's go to that policy now. That would be on page
17 13. I'm sorry. That's page 14. Right, investigative model?

18 A. Okay.

19 Q. Under an investigative model. Correct?

20 A. Okay.

21 Q. I want you to read it to yourself, because I'm trying to
22 move this along. I want you to read it to yourself if you can.
23 Just take a minute and read it to yourself, say from the
24 beginning -- from 2, A up and until -- up to J.

25 MR. BERNSTEIN: Your Honor, may I, while she's

FELDBAUM - REDIRECT

1 reading, just move here?

2 THE COURT: Yes, that's fine.

3 (pause.)

4 BY MR. BERNSTEIN

5 Q. Just let me know when you've had an opportunity, ma'am.

6 (pause.)

7 THE WITNESS: Did you want me to read through J?

8 MR. BERNSTEIN: You can read to J(iii).

9 (pause.)

10 THE WITNESS: Okay.

11 BY MR. BERNSTEIN

12 Q. Okay. And everything you just read, ma'am, do you agree
13 with me that the word or title case manager is not there?

14 A. Correct.

15 Q. And in fact, in the investigative model of April 25th, 2016
16 policies and procedures, which was in effect at the time my
17 client was alleged to have committed this incident, after an
18 investigator finds it, it goes to a panel. Correct?

19 A. Correct.

20 Q. And the panel is supposed to find responsibility, if any,
21 and charges. Correct?

22 A. Correct.

23 Q. In this procedure that was in effect at the time my client
24 was advised of charges or allegedly advised of charges and said
25 that there was an incident, there is no role of a case manager,

FELDBAUM - REDIRECT

1 such as yourself, in this investigative model. Correct?

2 A. Can you repeat that? I'm sorry.

3 Q. During the time --

4 A. Right.

5 Q. In accordance with the April 25th, 2016 policy that was in
6 effect, which was in effect at the time my client received
7 notice of a potential violation, there was no role of a case
8 manager, pursuant to Penn State's investigative model.
9 Correct?

10 A. Correct.

11 Q. Hence, the investigator would do their job and not make a
12 decision and provide it to a panel, who would then have a
13 hearing and make a determination of whether or not there was a
14 finding, and if there was a finding of responsibility, then
15 assess sanctions.

16 That's the investigative model in effect pursuant to
17 the April 25th, 2016 procedure. Correct?

18 A. You do assign a charge prior to the panel.

19 Q. No. The panel assigns. The investigator doesn't.

20 A. I'm sorry. "If the acquired information in the finalized
21 packet supports a Code of Conduct violation, charges will be
22 assigned."

23 Q. Who makes that determination?

24 A. The investigator.

25 Q. Okay. So the investigator. No case manager.

FELDBAUM - REDIRECT

1 A. Correct.

2 Q. In this case, the investigator didn't make that
3 determination, did they?

4 A. No.

5 Q. Okay. So you would agree with me that there was a change
6 in the middle of my client's investigation of what rules were
7 being implemented by Penn State. Correct?

8 A. During his investigation, yes.

9 Q. And would you agree that my client never received
10 notification of any change in Penn State's policy, besides a
11 link to the website. Correct?

12 A. I did not provide that.

13 Q. And you don't know -- and in preparation of your -- of
14 coming here today, you didn't see of any or learn of any.
15 Correct?

16 A. I was only focused on my own. So no.

17 Q. When you made a decision in this case -- in this model that
18 you used, there was no hearing. Correct?

19 A. Correct.

20 Q. You received the packet, including the -- any redactions,
21 and you made a determination. Correct?

22 A. Correct.

23 Q. And would you agree with me that this case was what one
24 could call a he said/she said. Correct?

25 A. He said/she said?

FELDBAUM - REDIRECT

1 Q. Is it not true, to boil down to the simplest thing, the
2 accuser said one thing and my client said something else?
3 Correct?

4 A. Correct.

5 Q. There were no witnesses. Correct?

6 A. Correct.

7 Q. In fact, isn't it a fact that you were informed that the
8 accuser -- withdrawn.

9 You were, in fact, informed that the complainant had a
10 medical exam. Correct?

11 A. It was in the packet.

12 Q. And in the packet, complainant refused to provide any
13 information of that medical packet to the investigator.
14 Correct?

15 THE COURT: Just a moment, Ms. Feldbaum.

16 MR. KELLER: Your Honor, objection. This is beyond
17 the scope of cross, my redirect.

18 THE COURT: I agree that it is. But I'm going to
19 overrule the objection. I think it's relevant. I would like
20 to hear this response.

21 Ms. Feldbaum, can you respond to that question?

22 THE WITNESS: I'm sorry. Can you repeat the question?

23 BY MR. BERNSTEIN

24 Q. The question was in the investigative file did you learn
25 that the complainant, despite it being Kat Matic, refused to

FELDBAUM - REDIRECT

1 provide any information with regard to her medical exam.

2 Correct?

3 A. Correct.

4 Q. Isn't it a fact that some of the allegations made in this
5 case by the complainant was of bleeding from the vagina?

6 Correct?

7 A. I recall bleeding. I don't recall if it indicated from
8 where.

9 Q. Okay. Would you agree with me that if she had a medical
10 exam close in time to the event, that might provide some
11 relevant or important information regarding bleeding? It's
12 possible?

13 A. It's possible.

14 Q. And the fact that she refused to provide that information,
15 that wasn't important to you?

16 A. No.

17 Q. So if in fact, the medical record indicated there was no
18 bleeding, would that have been important to you?

19 A. I don't believe that would indicate consent or no consent.

20 Q. I didn't ask that about consent or not to consent. I asked
21 if the fact that the complaining witness said as a result of
22 this incident I was bleeding, and a medical report had no signs
23 or no nothing of bleeding, that would not be important to you?

24 A. Given the timeframe --

25 Q. Respectfully, yes or no, ma'am; would that have been

FELDBAUM - REDIRECT

1 important to you?

2 A. Possibly.

3 Q. Okay. So would you agree -- and you were present at the
4 hearing. In fact, my client, John Doe, asked the hearing chair
5 to ask the complaining witness about her medical exam and about
6 the reports. And isn't it a fact that he refused to ask the
7 question, as saying it was new evidence. Do you recall that?

8 A. I don't know the reason. It's already discussed in the
9 packet, though. So if it was in the packet, then it would be
10 typical for a chair person to indicate that that information
11 should not be brought up again. It indicated in the packet
12 that she was not going to provide her medical record.

13 Q. Let me ask you a question. You're saying if it's in the
14 packet, they can't talk about it because it's already in the
15 packet. If it's not in the packet, they can't talk about it
16 because it's not in the packet. Then what can they talk about?

17 MR. KELLER: Objection, Your Honor. That just
18 mischaracterizes, I don't know, four hours of testimony.

19 THE COURT: I sustain the objection. Perhaps you can
20 rephrase and restate the question, Mr. Bernstein. Go right
21 ahead.

22 BY MR. BERNSTEIN

23 Q. I want you to assume for this fact that my client submitted
24 a question, "You received the results of that medical exam and
25 a report or records. Right?" And the hearing chair refused to

FELDBAUM - REDIRECT

1 answer that saying it was new evidence. Do you recall that?

2 A. I don't recall what the hearing chair said.

3 Q. Let me ask you. I want you to assume for this question
4 that that's what he said. He said it's new evidence. If, in
5 fact, the evidence is in the investigative report, how is it
6 new evidence?

7 A. What was in the investigative report is that she did not
8 want to share her record.

9 Q. Oh. So because she said she didn't want to share her
10 record, that's it, case closed, end of discussion?

11 A. No. But I think the question was about the record, that
12 she had indicated she was not willing to share.

13 Q. But -- okay. So Penn State allowed the -- Penn State
14 allowed the female accuser to accuse a person of non-consensual
15 vaginal digital penetration which caused bleeding. Penn State
16 allowed this person to say oh, I went for an exam, but I'm not
17 going to give you anything. And the accused was not allowed to
18 ask any questions. That's how the hearing works?

19 MR. KELLER: Your Honor, objection. I'm not even sure
20 that was a question. I don't understand the --

21 MR. BERNSTEIN: I'll withdraw it.

22 THE COURT: I think it's a question. I'll overrule
23 the objection. You can answer the question. Do you understand
24 what the question is?

25 THE WITNESS: Yeah. The chair person determines the

FELDBAUM - REDIRECT

1 questions, and the panel determines what questions may be asked
2 and what may not be asked. I don't.

3 BY MR. BERNSTEIN

4 Q. Let's go back -- you know what. We'll leave that for
5 another person at another time. Let me ask you this then.

6 If you're not allowed to ask questions about things
7 that are new, no new evidence, but then you are not allowed to
8 ask things that are already in the investigative packet, what
9 questions are you allowed to ask?

10 A. In terms of questions, it's really not -- it's really more
11 if new information is provided in responding to the questions
12 that are asked.

13 Q. But how can you get new information if you are not -- what
14 questions are you allowed to ask? I can't ask questions that
15 are already in the packet because it's already there, and I
16 can't ask questions that's not there because that's new
17 evidence.

18 So again, I'm asking you, what questions is an accused
19 person allowed to ask at a Penn State panel hearing?

20 A. Again, I don't determine the questions that are permitted
21 in a panel. The chair person is.

22 MR. BERNSTEIN: Your Honor, I have no further
23 questions.

24 THE COURT: Thank you. Any recross examination of
25 this witness?

FELDBAUM - RECROSS

1 MR. KELLER: Your Honor, I do. And I will endeavor to
2 be very brief.

3 THE COURT: Go right ahead.

4 MR. KELLER: Thank you.

5 RECROSS-EXAMINATION

6 BY MR. KELLER

7 Q. Thank you for hanging in there, Karen.

8 Counsel just asked you to examine Exhibit P-9, the
9 April code, and Exhibit P-10, the November code. And we have
10 probably done that ten times now.

11 A. Correct.

12 Q. And counsel pointed out that there would be an
13 investigation. The investigator would make the decision of
14 charges. It actually says charges would be assigned, and then
15 it would go to a Title IX decision panel. Correct?

16 A. Correct.

17 Q. And under the policy effective November 3, 2016, which was
18 used in this case -- correct?

19 A. Correct.

20 Q. -- the investigator would conduct their investigation.
21 Right?

22 A. Right.

23 Q. They would then give that information to you --

24 A. Correct.

25 Q. -- for you to evaluate and determine whether you thought

FELDBAUM - RECROSS

1 charges and sanctions were appropriate. Correct?

2 A. Correct.

3 Q. And then the student could either accept the proposed
4 finding and conduct sanction, he could reject one, accept the
5 other, he could reject both. Right?

6 A. Correct.

7 Q. If he chose to reject both, then it would go to a Title IX
8 decision panel. Right?

9 A. Correct.

10 Q. So that was an extra layer of process in the new policy.
11 Correct?

12 A. Correct.

13 Q. If John Doe or any respondent decides not to accept your
14 recommended finding and sanctions, it goes to the Title IX
15 decision panel. Right?

16 A. Correct.

17 Q. And they can make their own decision. Right?

18 A. Right. They can --

19 Q. They issue their own sanctions. Right?

20 A. Actually they can modify the charge within that same charge
21 code category.

22 Q. But they are not bound in any way by your decision. Right?

23 A. Nope. They are not even aware of the sanction I provide.

24 Q. So a respondent who decides -- and that's a legitimate
25 choice -- I'm not going to accept the case manager's sanction

FELDBAUM - COURT INQUIRY

1 or the case manager's finding, they took -- that they are now
2 going to go before a panel and it's going to -- it's a brand
3 new hearing. Right?

4 A. True.

5 MR. KELLER: Your Honor, I have no further questions.

6 MR. BERNSTEIN: Your Honor, I have one. Can I just do
7 it from here?

8 THE COURT: One.

9 REDIRECT EXAMINATION (**as-on-cross**)

10 BY MR. BERNSTEIN

11 Q. Ms. Feldbaum, in the April 25, 2016 model, the investigator
12 does not issue sanctions, does they -- do they?

13 A. No.

14 Q. So there's a change in the -- the April -- the April 25th,
15 2016 to the November 3rd, 2016 in that one person, being you,
16 gives the charges and the sanctions. That's a change from
17 April 25th, 2016. Correct?

18 A. Correct. But again --

19 MR. BERNSTEIN: I have no further questions, Your
20 Honor.

21 THE WITNESS: -- there would be final sanctions.

22 THE COURT: Anything else, Mr. Keller?

23 MR. KELLER: No, Your Honor.

24 THE COURT: So Ms. Feldbaum, I have a question. And
25 that relates to this medical report or examination.

FELDBAUM - COURT INQUIRY

1 Is it your understanding that Ms. Roe, once you had
2 received this file, which was in the spring of 2017, and your
3 involvement as the case manager began at that time, I believe
4 you testified --

5 THE WITNESS: Um-hmm.

6 THE COURT: -- was there an indication that she had
7 had a medical exam done when you got the investigative packet?
8 Do you recall?

9 THE WITNESS: Yes.

10 THE COURT: And was there a medical examination
11 supplied as part of the complainant's information that you
12 would have reviewed?

13 THE WITNESS: No.

14 THE COURT: There were -- and I don't know whether
15 it's in evidence or not. But there were -- there were -- if I
16 recall correctly, there were e-mail statements that the
17 complainant had made after the alleged assault in early
18 September of 2016 indicating that she had been assaulted and
19 that she had thought she was bleeding. And she said she had
20 noticed blood, and I think she said there was blood in her
21 underwear.

22 And she was attributing it, at least the way I read
23 the e-mails, to the assault itself and not something else.
24 Not, for example, menstrual period just to be precise, I guess,
25 or something else. Or a wound from something else, that she

FELDBAUM - COURT INQUIRY

1 had cut herself earlier in the day or whatever it might have
2 been.

3 Do you know whether she actually had a medical exam
4 undertaken? Because there was some reference that that was
5 going to be done. Do you know, as the case manager, whether
6 that occurred by the time you got the file, some eight months
7 later?

8 THE WITNESS: The way I read an investigative packet,
9 because there are a number of times for both complainant and
10 the respondent to ask questions of any of the information
11 that's in there, the reference made to the underwear was in the
12 last page of the investigative packet. I looked to see if
13 there was any question of that or any additional information
14 about the respondent indicating that he was questioning that.
15 I didn't see any. I only saw that statement that she had,
16 indeed, had this bloody underwear.

17 So I used the information that's in the packet,
18 because usually respondent and complainant, if there is
19 something in there that they want to challenge, there's an
20 indication of that in the packet. I didn't see any challenge
21 of that so I didn't --

22 THE COURT: I take your answer. But I guess what I'm
23 trying to figure out is whether or not the complainant
24 indicated to your office or to the investigator, by the time
25 you received the information from the investigator, that as a

FELDBAUM - COURT INQUIRY

1 result of this alleged assault she had gone to a doctor. She
2 had gone to someone to provide some medical care.

3 THE WITNESS: Yes, she did.

4 THE COURT: And what happened to that medical report?
5 Was that something that she just then did not provide?

6 THE WITNESS: Provide. Right. Because what happens
7 is at Penn State, the information we collect is maintained in
8 the respondent's file. And it's not atypical to have a
9 complainant who does not want their medical records to become a
10 part of a respondent's student educational record.

11 So what they often will do is say here's the
12 information, and because otherwise, that medical record becomes
13 part of the respondent's student record. And it's not atypical
14 for complainants to not want their medical record in the record
15 of another person, especially --

16 THE COURT: But I guess what I'm driving at is was
17 there a medical report?

18 THE WITNESS: No, there was not. But it's not
19 atypical, because had there been a medical report, it would
20 have become part of his student record.

21 THE COURT: But do you know whether she actually
22 sought medical treatment beyond her say-so?

23 THE WITNESS: It indicated it in the packet, and there
24 was nothing that questioned that in the packet.

25 THE COURT: But you don't know whether there was

FELDBAUM - COURT INQUIRY

1 actually beyond her saying it -- in Latin, it would be ipse
2 dixit. Beyond her saying so, you don't know whether she
3 actually went to a doctor or she went to the infirmary or she
4 went to a medical provider, because there was actually no
5 report reviewed by you?

6 THE WITNESS: Correct.

7 THE COURT: And as far as you're aware, there was no
8 report in the investigative packet, I'm going to call it that,
9 that was prepared by Ms. Matic and others --

10 THE WITNESS: Right.

11 THE COURT: -- which arrived on your desk in the
12 Spring of 2017?

13 THE WITNESS: Right. Nor was that challenged in the
14 investigative packet, as I recall. Which would typically be if
15 a respondent or complainant is concerned with something in the
16 packet, that's --

17 THE COURT: But were you concerned in a way in
18 evaluating the credibility of the complainant who said this is
19 what happened, and then there was actually, beyond her
20 statement that it had, no medical report provided? You don't
21 know whether there was any medical treatment sought. Were you
22 concerned about her credibility in following up on that or not
23 following up on it?

24 THE WITNESS: That's --

25 THE COURT: Because you were assessing credibility,

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1 weren't you?

2 THE WITNESS: I am. That is one piece of my
3 determination, looking at all of the information that was
4 provided in the packet. So there was enough other sufficient
5 information that that was not a key point for me.

6 THE COURT: So that -- did it cross your mind that --
7 did you wonder where was that medical report? She has
8 complained about it. It wasn't provided.

9 THE WITNESS: It wasn't surprising to me.

10 THE COURT: You understood the procedure. I
11 understand.

12 THE WITNESS: I --

13 THE COURT: But the fact that it wasn't there, that
14 didn't concern you that it may have diminished her credibility,
15 since it would have been an easy document to have provided and
16 perhaps have redacted in some fashion from a privacy standpoint
17 after the investigation was completed, after you had reviewed
18 it as the case manager, after there had been -- although there
19 hadn't been, at that point, a hearing.

20 It would seem to me, in the world that I live in, an
21 easy document to redact, to be very sensitive to. I'm not
22 suggesting you're operating under the same strictures that I
23 operate under here. But matters in this court, very sensitive
24 matters, sometimes of a sexual nature; photographs,
25 inflammatory photographs are filed under seal after a motion is

FELDBAUM - REDIRECT

1 filed with the Court and actually never become part of the
2 public record, are never reviewed by the public.

3 THE WITNESS: Right.

4 THE COURT: They are reviewed by me but not by the
5 public. And I don't know whether that could have been
6 effective with Penn State. But gosh, it seems it could have
7 been.

8 THE WITNESS: If that were the only information in the
9 packet, I think it would have impacted my decision. But there
10 was enough other sufficient information in the packet for me to
11 get to it being reasonable that there was a violation.

12 THE COURT: And assessing the credibility of the
13 complainant and assessing the credibility of the respondent and
14 the responses at that point?

15 THE WITNESS: Correct.

16 THE COURT: Mr. Bernstein, any questions based on my
17 examination of witness?

18 MR. BERNSTEIN: Yes.

19 THE COURT: Briefly.

20 MR. BERNSTEIN: Very briefly.

21 REDIRECT EXAMINATION (**as-on-cross**)

22 BY MR. BERNSTEIN

23 Q. Do you know if Kat Matic, in fact, offered to the
24 complainant exactly what His Honor offered in terms of
25 redaction of personal information, health information, birth

FELDBAUM - REDIRECT

1 date, insurance information? Did Kat Matic, in fact, offer
2 that to the complaining witness?

3 A. I don't know.

4 MR. BERNSTEIN: I have nothing further.

5 THE COURT: Thank you.

6 Mr. Keller, any examination of this witness based upon
7 my examination?

8 MR. KELLER: No. Thank you, Your Honor.

9 THE COURT: Ms. Feldbaum, thank you very much for your
10 testimony today. It's appreciated. It's not anticipated that
11 we would need to call you as a witness tomorrow, but it's a
12 possibility. I'll allow you to arrange with Ms. Newhart, who
13 I assume you know, and with counsel, Mr. Keller, your pertinent
14 information, if we had to reach you, I think, by telephone
15 tomorrow, which I don't anticipate. Counsel doesn't
16 anticipate. But it is a possibility. Thank you. You may step
17 down.

18 (Witness excused.)

19 THE COURT: All right. Well, again, Counsel, we're
20 going to stand in recess now for the evening. So you've got
21 three hours tomorrow, and we really want to complete it in
22 three hours. So I want you to think about, both of you, how
23 you would go about examining, I guess, these two remaining
24 pertinent witnesses and really tailor the examination and the
25 cross-examination so that we can complete that in that three

1 hour period and then provide, to the extent you feel you need
2 to, any summation, at least based upon the hearing over the
3 past two days.

4 I understand what the case is about obviously. I
5 don't -- and I understand what the law is. But I certainly
6 would allow you to sum up and draw to my attention what you
7 think are the highlights, such as it were, of the relevant
8 testimony both this afternoon and tomorrow afternoon.

9 MR. BERNSTEIN: Your Honor, just so I -- there are
10 three witnesses tomorrow.

11 THE COURT: I'm sorry. Three. Your man is
12 testifying.

13 MR. BERNSTEIN: Yes.

14 THE COURT: All right. Any questions based on that?
15 Mr. Keller, any questions?

16 MR. KELLER: No questions, Your Honor. We will have
17 Mr. Shaha who will be testifying for the defense. So that's
18 three for plaintiff and one for us.

19 THE COURT: Well, however you care to construct it,
20 that's fine. But really, you need to figure out between the
21 two of you how you can get that done in that timeframe, which I
22 would suppose would be sufficient.

23 But as they say in Hollywood, let's cut to the chase
24 and get to the really relevant parts of this that would be
25 beneficial to the Court. I realize we all think differently

1 about what's relevant and what's not relevant. Ultimately,
2 I've going to determine it in this instance.

3 So with that, we will stand in recess then in this
4 matter until 1:30 p.m. tomorrow. Court, in general, until 10
5 a.m. Court will rise.

6 THE COURTROOM DEPUTY: All rise.

7 (Court recessed at 7:20 p.m.)
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2
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4 Reporter for the United States District Court for the Middle
5 District of Pennsylvania, appointed pursuant to the provisions
6 of Title 28, United States Code, Section 753, do hereby certify
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10 I do further certify that the foregoing transcript has been
11 prepared by me or under my supervision.

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15 Lori A. Fausnaught, RMR, CRR
16 Official Court Reporter

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